

LAW	3393	Law School-DISTANCE LEARNING	LW	ETHICS & THE PRACTICE OF CRIMINAL LAW	400	3.000	12.00
LAW	3541	Law School-GULFPORT	LW	INDIVIDUAL RESEARCH PROJECT	I	1.000	0.00
LAW	3607	Law School-DISTANCE LEARNING	LW	JUDICIAL PRACTICE	S+	2.000	0.00
LAW	3894	Law School-DISTANCE LEARNING	LW	SURVEY OF FLORIDA LAW	S	2.000	0.00

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	8.000	7.000	7.000	3.000	12.00	4.000
Cumulative	71.000	70.000	70.000	53.000	176.25	3.325

Term : Fall 2022-Law

Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	3140C	Law School-DISTANCE LEARNING	LW	APPELLATE PRACTICE & ADVANCED CRIMINAL	325	3.000	9.75	
LAW	3152	Law School-DISTANCE LEARNING	LW	BANKRUPTCY	300	3.000	9.00	
LAW	3764	Law School-DISTANCE LEARNING	LW	OVERVIEW OF FLORIDA LAW	275	3.000	8.25	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	9.000	9.000	9.000	9.000	27.00	3.000
Cumulative	80.000	79.000	79.000	62.000	203.25	3.278

Transcript Totals

Level Comments

CLASS RANK FOR

Fall 2022-Law:

85/263

Transcript Totals - (Law)	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution	80.000	79.000	79.000	62.000	203.25	3.278
Total Transfer	0.000	0.000	0.000	0.000	0.00	0.000
Overall	80.000	79.000	79.000	62.00	203.25	3.278

Course(s) in Progress

Term : Spring 2023-Law

Subject	Course	Campus	Level	Title	Credit Hours
LAW	3685	Law School-DISTANCE LEARNING	LW	LAW PRACTICE MANAGEMENT	2.000
LAW	3696C	Law School-DISTANCE LEARNING	LW	ADV LGL WRT: CONTRACT DRAFTING	2.000
LAW	3751	Law School-DISTANCE LEARNING	LW	MULTISTATE STRATEGIES	4.000

April 05, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write in support of Madeleine "Maddie" Voigt's application to serve as a law clerk to Your Honor. My name is Ryan Hopper. I am a litigation shareholder at Greenberg Traurig, P.A., and a former law clerk to a U.S. district judge.

Over the past few years and while also attending law school, Maddie has worked as a paralegal in our complex-litigation practice. We predominantly defend sophisticated clients in mass-tort and class actions, and we staff cases leanly to concentrate knowledge and remain nimble. The work is rewarding but demanding.

Maddie has become a core team member and has consistently "punched above her weight" for her age and experience. She routinely helps multiple national-caliber expert witnesses develop opinions on diverse scientific topics—compiling studies and other materials for consideration, participating in working meetings with experts, and serving as a sounding board for anticipated testimony. She contributes to potentially dispositive legal analyses and has helped prepare dozens of Daubert and summary-judgment motions. She supports technical depositions, manages electronic discovery, and otherwise seems to take any laboring oar she can to help represent our clients efficiently and effectively.

I have no doubt that Maddie would prove to be an excellent clerk. Aside from the wealth of practical experience she would bring to the role, Maddie is intellectually curious, hard-working, practical, and self-motivated. And sometimes just as important in close-knit working environments, Maddie has a fantastic attitude. I am confident our colleagues would all agree that Maddie keeps our spirits up when the stakes are high and the nights are long.

Our practice group views clerkships as so valuable that we very rarely hire lawyers directly out of law school. We have not done so in years, much preferring instead to seek young lawyers coming out of federal clerkships. Maddie is an exception, and we are extending her an offer to join us as a lawyer when she graduates and passes the Bar. Even still, we fully support her interest in pursuing a clerkship. My own remains one of the most meaningful periods of my life and career. I hope Maddie can have a similar experience, and I know she would well serve her court and country.

If Your Honor has any questions about Maddie, it would be my pleasure to answer them.

Respectfully,

Ryan Hopper

Shareholder

Greenberg Traurig, P.A.

Tampa, FL 33602

(813) 318-5707

hopperr@gtlaw.com

Ryan Hopper - hopperr@gtlaw.com - 8133185707

Erica J. Weiner

Telephone: (917)601-9949

Email: EricaJayneWeiner@gmail.com

March 19, 2023

Dear Judge:

I am writing this letter of recommendation in support of Madeleine Voigt for a judicial clerkship with Your Honor upon her upcoming graduation from law school in May 2023.

I first met Madeleine several years ago when she interviewed with me to be a Trademark & Licensing Paralegal on my Intellectual Property and Retail team at Ashley Furniture Industries. At the time, my position was Assistant General Counsel, Global IP & Retail at Ashley Furniture Industries, and I was looking for a candidate who had some fundamental skills, but had a yearning to learn more and really develop in the paralegal role. Madeleine impressed me from the moment we met - - she was bright, motivated and was passionate about learning. She did not appear to be the type of candidate who was just saying these things to get the job, but actually meant them. Happily, this proved to be true, and while working together at Ashley Furniture Industries, Madeleine used her prior knowledge as the building blocks, and continued to learn different areas of the law, from global trademark prosecution, to intellectual property enforcement management and drafting retail store licenses and amendments. She continued to impress me, and even more so as she was a full time law student while working on my team, and handled the balancing of her obligations incredibly well. What impressed me even more was her ability to learn, accept feedback, and incorporate it in her work going forward. She was a great listener and was always trying to think of ways to help.

Based upon my experience with Madeleine, I believe she certainly has the requisite skills to excel in a clerkship, and believe her enthusiasm would only help guarantee success in this role. I hope you will consider her for a clerkship position, and thank you for your consideration.

Best regards,



Erica J. Weiner

IN THE SECOND DISTRICT COURT OF APPEAL OF FLORIDA

SALVADOR CARBAJAL)	
GARCIA)	
)	DCA CASE NO. 2D22-1409
Appellant.)	L.T. CASE NO. 19-CF-015144
v.)	
)	
STATE OF FLORIDA)	
)	
Appellee.)	
_____)	

An Appeal from the Circuit Court of the Twentieth Judicial Circuit
In and for Lee County

APPELLANT'S INITIAL BRIEF

Madeleine Voigt, Esq.
Florida Bar No. 000000
1 Main Street
Tampa, FL 36000
813-555-5555
mvoigt@law.stetson.edu

Counsel for Appellant Carbajal

TABLE OF CONTENTS

Table of Authorities	ii
Preface	1
Statement of the Case and Facts	
a. The pertinent facts of the alleged offense	1
b. The pertinent course of proceedings and disposition of the case below	2
c. The pertinent facts of trial	3
Summary of the Argument	7
Argument	8
 I. MR. CARBAJAL’S MOTION TO SUPPRESS WAS DENIED IN ERROR BECAUSE THE STATE FAILED TO SHOW THE EXIGENT CIRCUMSTANCES REQUIRED FOR A WARRANTLESS SEARCH AND SEIZURE	 8
 II. DENIAL OF MR. CARBAJAL’S REQUEST FOR THE MISDEMEANOR ANIMAL CRUELTY INSTRUCTION DEPRIVED MR. CARBAJAL OF AN ANDEQUATE THEORY OF DEFENSE	 12
 Conclusion	 15
Certificates of Service and Compliance	15, 16

TABLE OF AUTHORITIES

Cases	Page
<i>Aumuller v. State</i> 944 So. 2d 1137, 1142 (Fla. 2d DCA 2006)	12
<i>Brinkley v. County of Flagler</i> 769 So. 2d 468 (Fla. 5 th DCA 2000)	7, 9
<i>Davis v. State</i> 834 So. 2d 322 (Fla. 5th DCA 2003)	7
<i>Duke v. State</i> 82 So. 3d 1155, 1157-58 (Fla. 2d DCA 2012)	8
<i>Jones v. State</i> 648 So. 2d 669 (Fla. 1994)	9
<i>Pagan v. State</i> 830 So. 2d 792, 808 (Fla. 2002)	7
<i>Parker v. State</i> 641 So. 2d 369, 376 (Fla. 1994)	7, 13
<i>State v. Morival</i> 75 So. 3d 810 (Fla. 2d DCA 2011)	13
<i>Stephens v. State</i> 787 So. 2d 747, 756 (Fla. 2001)	7, 13
Constitutions, Statutes, and Rules	
Florida Statute 777.011	1
Florida Statute 828.12	2, 6, 14
Florida Standard Jury Instruction 29.13	14

PREFACE

The parties are referred to herein as Mr. Carbajal and the State of Florida (the “State”). The Record on Appeal is cited as (R. *P*) and the trial transcript as (T. *P*) where “*P*” is the page.

STATEMENT OF THE CASE AND FACTS

a. The pertinent facts of the alleged offense

On March 4, 2019, Animal Control responded to a complaint about a dog tied to basketball post in a residential driveway. (T. 229, 245). The responding Animal Control officer noticed that the dog, named Walter, had blood on his chest and a rope tied around his neck that was embedded in his skin. (T. 249). Walter emitted a strong, foul odor. (T. 250-51, 284). No one was home while the officer was at the property. (T. 273). The officer removed Walter from the property and took him to Lee County Animal Services for medical treatment. (T. 260). The officer contacted Mr. Carbajal and they met at Lee County Animal Services (T. 263). Mr. Carbajal surrendered Walter. (T. 264-65). It is undisputed that Mr. Carbajal owned Walter. (T. 263-64, 448).

b. The course of proceedings and the disposition of the matter below

Salvador Carbajal was charged with one count of cruelty to animals in violation of Florida Statutes 828.12(2); 777.011. (R. 27).

Less than one month before trial, the State amended the information to charge Salvador Carbajal Garcia with one count of cruelty to animals in violation of Florida Statutes 828.12(2); 777.011. (R. 42).

Mr. Carbajal was tried by jury before the Honorable Bruce Kyle on February 4 and 5, 2020. (R. 47).

Through counsel, Mr. Carbajal filed a motion to suppress evidence obtained as a result of Animal Control and the Lee County Sheriff's Office's entry on his property, arguing that both agencies lacked the exigency required to enter his property without a warrant. (R. 50). The motion was heard before trial began and was denied. (T. 3, 67).

At trial, the State moved to limit proffered witness testimony from Mr. Carbajal's neighbors, Mr. and Ms. Gamble. (T. 459). The court granted this motion in part, excluding testimony about their interaction with law enforcement. (T. 474).

Counsel for Mr. Carbajal moved for judgment of acquittal after the State rested, arguing that the State charged a different individual, Salvador Garcia, pursuant to the amended information. (T. 444, 523). The motion was denied. (T. 449). Mr. Carbajal renewed his motion at the close of all evidence. The motion was again denied. (T. 523). After the defense rested, counsel for Mr. Carbajal requested an additional jury instruction of the standard cruelty to animals instruction. (T. 529). The request was denied. (T. 535).

The jury found Mr. Carbajal guilty as charged. (R. 74). Mr. Carbajal moved for a new trial, arguing that the trial court committed prejudicial error when it excluded Mr. and Ms. Gamble's testimony and denied Mr. Carbajal's motion to suppress and motion for judgment of acquittal. (R. 98). The court did not rule on the motion and Mr. Carbajal was sentenced to 364 days in jail as a condition to five years of probation. (R. 106, 113-14).

c. The pertinent facts of the trial

Before opening arguments, the court heard Mr. Carbajal's motion to suppress. (T. 11-68). The state proffered testimony from Animal Control Officer Zemper Ortiz and Lee County Sheriff's deputy Joshua Roedding. (T. 12, 44). Mr. Carbajal argued that the proffered

testimony did not show the exigent circumstances required to enter his property without a warrant. The court denied the motion, finding that Officer Ortiz's observations warranted Walter's immediate removal. (T. 67-68).

Animal Control Officer Zemper Ortiz testified that she received the complaint about Walter on the morning of March 3, 2019 and arrived at Mr. Carbajal's home to investigate the complaint the next day. (T. 247). Officer Ortiz approached Walter and noticed the embedded rope and wound on Walter's neck. (T. 250). She testified that she was approximately two feet away from Walter when she noticed a rotting smell. (T. 250). Walter was friendly and wanted Officer Ortiz to pet him. (T. 37). Walter was not whimpering or barking. (T. 37). Officer Ortiz noticed a pink bucket near Walter that contained water. (T. 23-24). She testified that she knocked on the door of the house and realized no one was home. (T. 251). She then returned to Walter and called dispatch for Lee County Sheriff's Office to respond. (T. 251). While waiting for the deputy to arrive, Officer Ortiz did not try to remove the rope from Walter's neck. (T. 253). She testified that Walter was unable to take shelter underneath Mr. Carbajal's vehicle parked in the driveway. (T. 255-56).

Lee County Sheriff's Deputy Joseph Roedding responded to Officer Ortiz's call for assistance. (T. 283-84). Deputy Roedding testified that when he arrived on scene, Officer Ortiz requested he generate a case number so she could put a notification on Mr. Carbajal's door that Animal Control was at the property. (T. 284). Deputy Roedding testified this was the only reason he was called to the property. (T. 284). When he approached the driveway, he noticed Walter come out from under Mr. Carbajal's parked vehicle. (T. 290). He testified that he noticed an odor, possibly feces, when he approached Walter. (T. 285-86). He did not notice Walter's injury at first. (T. 289). Officer Ortiz asked Deputy Roedding to help cut the rope tying Walter to the basketball hoop. (T. 288). He cut the rope and then helped Officer Ortiz take Walter to her Animal Control bus. (T. 289). When Deputy Roedding asked Officer Ortiz why Walter was being removed from the property, Officer Ortiz lifted Walter's jaw, and Deputy Roedding noticed "swelling to the neck and a little red mark" where the rope was attached to Walter. (T. 289). This is the first time Deputy Roedding noticed that Walter was injured. (T. 289).

During proffered direct examination, Mr. Gamble testified that on the morning of Mr. Carbajal's arrest, five Lee County Sheriff's

officers came to his garage door. (T. 454). Mr. Gamble testified that the officers “kept trying to tell us that we needed to say something bad about Mr. Carbajal.” (T. 455). He further testified that the officers talked to him about the media. (T. 455). More specifically, he quoted the officer telling him that he needed to say something bad about Mr. Carbajal for the media. (T. 456).

Ms. Gamble testified during proffered direct examination that the officers wanted her to say there was a smell (coming from Walter) and informed her that the media will be at her door after Mr. Carbajal’s arrest. (T. 467).

The jury received the following standard instructions: Introduction to Final Instructions, Statement of the Charge, Count I Aggravated Animal Cruelty, Principals, Plea of Not Guilty, Reasonable Doubt and Burden of Proof, Defendant’s Statements, Rules for Deliberation, Cautionary Instruction, Verdict, and Submitting Case to the Jury. (R. 59-71). Counsel stipulated to the removal of numbers nine and ten from the standard instructions for Weighing the Evidence. (T. 526). Mr. Carbajal requested an instruction of the standard animal cruelty instruction based on F.S. 828.12(1). (T. 530). The request was denied. (T. 535).

The verdict form was general: “the defendant is guilty of Aggravated Animal Cruelty.” (R. 74).

SUMMARY OF THE ARGUMENT

Mr. Carbajal’s motion to suppress evidence obtained from the warrantless search of his property was denied in error because the State failed to show exigent circumstances. *Brinkley v. County of Flagler*, 769 So. 2d 468 (Fla. 5th DCA 2000); *Davis v. State*, 834 So. 2d 322 (Fla. 5th DCA 2003). Walter was not subject to seizure under the plain view doctrine. *Pagan v. State*, 830 So. 2d 792, 808 (Fla. 2002). Thus, Mr. Carbajal’s judgment and sentence should be vacated.

The trial court erred when it denied Mr. Carbajal’s request for an additional jury instruction of the standard animal cruelty instructions, because the instruction given did not adequately cover his theory of defense. *See Parker v. State*, 641 So. 2d 369, 376 (Fla. 1994); *see also Stephens v State*, 787 So. 2d 747, 756 (Fla. 2001). Accordingly, at the least, Mr. Carbajal’s judgment and sentence should be reversed and remanded for new trial.

ARGUMENT

I. MR. CARBAJAL’S MOTION TO SUPPRESS WAS DENIED IN ERROR BECAUSE THE STATE FAILED TO SHOW THE EXIGENT CIRCUMSTANCES REQUIRED FOR A WARRANTLESS SEARCH AND SEIZURE

This Court reviews the denial of a motion to suppress using a mixed standard: the trial court’s application of the law is reviewed *de novo*, but this Court defers to the trial court’s factual findings if they are supported by competent, substantial evidence. *Duke v. State*, 82 So. 3d 1155, 1157-58 (Fla. 2d DCA 2012).

Law enforcement may enter private property without an arrest or search warrant to: preserve life or property, render first aid and assistance, or conduct a general inquiry into an unresolved crime. *Brinkley*, 769 So. 2d at 471.

However, they must not enter with an accompanying intent to arrest or search, and, importantly, they must have reasonable grounds to believe there is a substantial threat of imminent danger to life, health, or property. *See id.*

Moreover, under the plain view doctrine, law enforcement can only seize an object without a warrant if the object’s incriminating character is “immediately apparent” and the officers have a lawful

right of access to the object. *Jones v. State*, 648 So. 2d 669 (Fla. 1994) (citing *Minnesota v. Dickerson*, 508 U.S. 366, 113 S. Ct. 2130 (1993)).

Here, the court heard proffered testimony from Animal Control Officer Zemper Ortiz and Lee County Sheriff's deputy Joshua Roedding. (T. 12, 44). Mr. Carbajal argued that the proffered testimony did not show the exigent circumstances required to enter his property without a warrant. (T. 66-67). However, the court found that Officer Ortiz's observations warranted immediate action. (T. 66-67).

The record does not demonstrate that Animal Control and the Lee County Sheriff's Office's had the exigency required to search Mr. Carbajal's property without a warrant. The investigating Animal Control officer arrived at Mr. Carbajal's home to investigate the complaint, that Walter was tied to a basketball post in a driveway, a day after it was received. (T. 247). It wasn't until the officer approached Walter that she noticed blood on Walter's chest (T. 250). She noticed that Walter smelled once she was within two feet of him. (T. 250). Walter was friendly and not showing any obvious signs of distress, like whimpering or barking. (T. 37). Walter had water available to him. (T. 23-24). Notably, once the officer noticed the rope

embedded in Walter's neck, the officer never tried to remove it. (T. 253).

When the Lee County Sheriff's deputy arrived at Mr. Carbajal's property to complete paperwork, the deputy did not notice Walter's injury until he helped place Walter into the animal control officer's vehicle. (289). He did not notice Walter's injury while cutting the rope. (289). The deputy also noticed an odor, which he thought may have been feces. (T. 285-86). Once Walter was in the animal control officer's vehicle, the deputy noticed "swelling to the neck and a little red mark" after the animal control officer lifted Walter's chin to expose his neck (289). This was the first time the deputy noticed that Walter was injured. (289).

The facts in *Brinkley* are in stark contrast. In *Brinkley*, an animal control officer and sheriff's deputy responded to a complaint about many animals being kept in unhealthy conditions on a farm. *Brinkley*, 769 So. 2d at 469. Upon arriving at the gate of the property, both officers were "immediately struck by the undeniable reality of the horrid existence of inhumanity." *Id* at 471. Just by standing at the gate, both officers were overwhelmed by the nauseating smell of animal waste and could see piles upon piles of trash and feces on the

property. Dogs were running freely around the property and barking so loud that the officers had to shout to speak to one another. When approaching the farmhouse, the officers noticed a decaying dog carcass on top of a stack of small pet carriers on the porch. There was a living dog in one of the small carriers and fluid from the decaying carcass was dripping onto the living dog. The insides of the animal carriers were lined with approximately three inches of feces and there were many water bowls containing black, foul-smelling water or no water at all. Further inspection of the property revealed a second dead dog, partial dog remains, and a roach infestation so severe that roaches were eating a puppy's flesh.

Given the obvious distress of the animals and abhorrent conditions of the property, any reasonable person would have concluded that the immediate need for protective action was warranted. *Id* at 472. The animals on the property were seized. *Id*.

The facts in Mr. Carbajal's case simply do not demonstrate the exigency required for a warrantless search and seizure. Walter was in good spirits and not showing any obvious signs of distress. Walter's wound was not immediately apparent. The deputy did not even notice the wound until after he helped load Walter into the

animal control vehicle. At that point, the deputy asked why Walter was being removed and the animal control officer lifted Walter's chin to show the deputy the wound.

Moreover, besides the smell with a conflicting source, the record does not show Mr. Carbajal's property and Walter's area to be in a horrid, inhumane condition. Thus, any reasonable person who arrived at Mr. Carbajal's property the day it was investigated would not have concluded that an urgent and immediate need for protective action was warranted. Accordingly, Mr. Carbajal's motion to suppress was denied in error and his judgment and sentence should be vacated.

II. DENIAL OF MR. CARBAJAL'S REQUEST FOR THE STANDARD ANIMAL CRUELTY INSTRUCTION DEPRIVED MR. CARBAJAL OF AN ADEQUATE THEORY OF DEFENSE

This Court reviews a trial court's decision on the giving or withholding of a proposed jury instruction is under the abuse of discretion standard, and a defendant is entitled to have the jury instructed on the rules of law applicable to his theory of defense if there is any evidence to support such instructions. *Aumuller v. State*, 944 So. 2d 1137, 1142 (Fla. 2d DCA 2006).

The trial court erred when it denied Mr. Carbajal's request for the misdemeanor animal cruelty instruction, because the felony instruction given did not adequately cover his theory of defense. *See Parker v. State*, 641 So. 2d 369, 376 (Fla. 1994); *see also Stephens v. State*, 787 So. 2d 747, 756 (Fla. 2001).

To receive an additional instruction, the requested instruction must be supported by the evidence, be a correct statement of the law that is not misleading or confusing, and ensure that the defendant's theory of defense is adequately covered. *See Stephens*, 787 So. 2d at 756. Whether the animal cruelty amounts to a misdemeanor under F.S. 828.12(1) or a felony under F.S. 828.12(2) is a question for the jury. *See State v. Morival*, 75 So. 3d 810 (Fla. 2d DCA 2011) (citing *Hynes v. State*, 1 So. 3d 328 (Fla. 5th DCA 2009)).

Here, it is undisputed that Mr. Carbajal's requested standard instruction is a correct statement of law that is not misleading or confusing. In addition, the requested instruction clearly encompasses Mr. Carbajal's alleged conduct of animal cruelty (T. 530-531). Lastly, the requested instruction was required to ensure that Mr. Carbajal's theory of defense was adequately covered pursuant to *Stephens* and *Morival*.

Mr. Carbajal requested jury instruction 29.13(a), which is the standard instruction for cruelty to animals under F.S. 828.12(1). (T. 530). The trial court denied Mr. Carbajal's request solely because cruelty to animals is not listed as a category two lesser included offense on the standard instructions for animal cruelty. (T. 535).

However, the crux of Mr. Carbajal's defense was that he did not intentionally harm Walter. (T. 235-36). Mr. Carbajal offered witness testimony from neighbors that interacted with and observed Walter on a regular basis (T. 481-83, 488-92). Mr. Carbajal testified that he did not notice anything wrong with Walter and Walter was not in distress (T. 503-505).

It was possible for the jury to find that Mr. Carbajal committed a misdemeanor under F.S. 828.12(1) because there is evidence to support that he did not intentionally harm Walter. Thus, the jury should have received the standard instruction for cruelty to animals under F.S. 828.12(1). Without it, Mr. Carbajal was deprived of his theory of defense that he did not intentionally harm Walter. Accordingly, judgment and sentence should be reversed and remanded for new trial.

CONCLUSION

For the reasons contained herein, this Court must vacate Mr. Carbajal's judgment and sentence, and remand for new trial.

Respectfully submitted,

Madeleine Voigt, Esq.
Florida Bar No. 000000
1 Main Street
Tampa, FL 36000
813-555-5555
mvoigt@law.stetson.edu

Counsel for Appellant Carbajal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email to Pamela Jo Bondi, Office of the Attorney General, CrimappTPA@myfloridalegal.com, Concourse Center #4, 3507 E. Frontage Rd. – Suite 200, Tampa, FL 33607, (813) 287-7900, on this 21st day of November, 2022.

S/ Madeleine Voigt
Madeleine Voigt, Esq.
Florida Bar No. 000000
1 Main Street
Tampa, FL 36000
813-555-5555
mvoigt@law.stetson.edu
Counsel for Appellant Carbajal

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the font size used in this Brief is Bookman Old Style 14 point and Courier New 12 point in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

S/ Madeleine Voigt

Applicant Details

First Name **Samuel**
 Last Name **Waranch**
 Citizenship Status **U. S. Citizen**
 Email Address swaranch@pennlaw.upenn.edu
 Address

Address

Street
1904 Pine St. Apt. 1
City
Philadelphia
State/Territory
Pennsylvania
Zip
19103
Country
United States

Contact Phone Number **9727429005**

Applicant Education

BA/BS From **Oberlin College**
 Date of BA/BS **May 2019**
 JD/LLB From **University of Pennsylvania Carey Law School**
<https://www.law.upenn.edu/careers/>
 Date of JD/LLB **May 20, 2023**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **University of Pennsylvania Law Review**
 Moot Court Experience **No**

Bar Admission**Prior Judicial Experience**

Judicial Internships/
 Externships **Yes**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Heaton, Paul
pheaton@law.upenn.edu
Pritchett, Wendell
pritchet@law.upenn.edu
Austin, Regina
raustin@law.upenn.edu
215-898-5185

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Samuel I. Waranch

1904 Pine St. Apt. 1 Philadelphia, PA 19103 • (972) 742-9005 • swaranch@upenn.pennlaw.edu

March 23, 2023

The Honorable Jamar K. Walker
United States District Court
Eastern District of Virginia

Dear Judge Walker,

I hope you are well. I am writing to request your consideration of my application for a clerkship beginning in the fall of 2024 following a year of litigation experience at a Quinn Emanuel. Originally from Dallas, I am a third-year law student at the University of Pennsylvania Carey Law School.

Enclosed are my resume, transcript, and writing samples. Letters of recommendation from Professor Paul Heaton (pheaton@law.upenn.edu, 215-746-3353), Professor Regina Austin (raustin@law.upenn.edu, 215-898-5185), and Interim University President Wendell Pritchett (pritchet@law.upenn.edu, 215-898-7227) are also provided. The Honorable Michael A. Shipp, of the District of New Jersey, and his career clerk, Frances Huskey, can also be reached as references at 609-989-2009. Please let me know if any additional references or information is needed.

Sincerely,

Samuel I. Waranch

Samuel I. Waranch

1904 Pine St. Apt. 1, Philadelphia, PA 19103 • 972-742-9005 • swaranch@pennlaw.upenn.edu

EDUCATION

University of Pennsylvania Carey Law School, Philadelphia, PA May 2023

J.D. Candidate

Honors: *University of Pennsylvania Law Review*, Senior Editor

Activities: Criminal Law with Professor Paul Heaton, Teaching Assistant
Custody and Support Assistance Clinic, Legal Advocate
First Generation Professionals, Member
Penn Law Ultimate Frisbee, Founder and Co-President

Oberlin College, Oberlin, OH May 2019

B.A., Political Science

Honors: Dean's Fellowship, Cole Scholar in Electoral Politics

Activities: Oberlin College Chess Team, Captain of Team, Three-Time "Small College" National Champion
Student Senate, Student Life Committee Chair

EXPERIENCE

Quinn Emanuel Urquhart & Sullivan, New York, NY Summer 2022

Summer Associate

Federal Community Defender Office, Eastern District of Pennsylvania, Philadelphia, PA Fall 2021

Extern, Capital Habeas Unit

- Drafted and edited habeas petitions in capital cases.
- Wrote memoranda addressing discreet legal questions to aid supervising attorneys.

United States District Court, District of New Jersey, Trenton, NJ Summer 2021

Judicial Intern, Hon. Michael A. Shipp

- Drafted opinions for a variety of civil and criminal cases and edited pending opinions.
- Served collaboratively on trial teams to brief the judge on motions in limine and synthesize points of dispute.

National Museum of American Jewish History, Philadelphia, PA Spring 2020

Academic Liaison Intern

- Assisted in the creation and implementation of seasonal academic initiatives.
- Interviewed and recruited prospective summer interns.

Varsity Tutors, Philadelphia, PA September 2019 – August 2020

LSAT Tutor

- Tutored the LSAT to aspiring law students in-person and online and developed individually tailored curricula.
- Served as a pro-bono tutor to prospective law students from underserved backgrounds.

Oberlin Politics Department, Oberlin, OH Fall 2018

Research Assistant

- Coded U.S. Congressional websites to aid in data collection and analysis for a National Science Foundation sponsored paper.
- Identified salient political trends across aspiring U.S Congressional members' campaign websites.

INTERESTS

Chess; Ultimate Frisbee; Cooking

Samuel I. Waranch – Penn Law Transcript

Spring 2022

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Private Action: Antitrust, Rico, and Class Action	Howard Langer	A	3	
Visual Legal Advocacy	Regina Austin	A	2	Recommender
Evidence	David Rudovsky	B+	4	
Business Management	Rahul Kapoor	Credit	3	
Teaching Assistant – Criminal Law	Paul Heaton	Credit	2	Recommender
Law Review	N/A	Credit	1	

Fall 2021

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Land Use in Practice	Thomas Witt	A	2	
Visual Legal Advocacy	Regina Austin	A	2	Recommender
Appellate Advocacy	Matthew Duncan	B+	3	
Federal Defenders Office Externship – Capital Habeas Unit	N/A	Credit	6	
Law Review	N/A	Credit	1	

Spring 2021

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Land Use Law	Wendall Pritchett	A	3	Recommender
Law and Society in Japan	Eric Feldman	A-	3	
Torts	Jacques DeLisle	B+	4	
Constitutional Law	Seth Kreimer	B+	4	
Legal Practice Skills	Jessica Simon	Credit	3	
Legal Practice Skills (Cohort)	Conor Ferrall	Credit	N/A	

Fall 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Criminal Law	Paul Heaton	A-	4	Recommender
Civil Procedure	Tobias Barrington Wolff	B+	3	
Contracts	Jean Galbraith	B+	3	
Legal Practice Skills	Jessica Simon	Credit	3	
Legal Practice Skills (Cohort)	Conor Ferrall	Credit	N/A	

Samuel I. Waranch – Oberlin College Undergraduate Transcript**Major** – Political Science

Note – Ungraded athletic courses such as “strength training” and “bowling” as well as required “winter term” independent projects conducted during the month of January such as “intensive chess study” have been omitted for clarity.

Spring 2019

COURSE	Grade	Credit Units	Comment
Practicum in Applied Research	A-	4	
Introductory Astronomy	Pass	2	
Jewish Immigration	A+	2	
Beginning Piano	A-	2	
Coordinator - Chessco	Pass	1	I taught a 15-person beginner and introductory chess class through Oberlin's “experimental college.”

Fall 2018

COURSE	Grade	Credit Units	Comment
Partisanship Analysis	A	4	
History of the Holocaust	A-	4	
Project in Electoral Politics	B+	4	
Jewish Immigration	A	2	
Coordinator - Chessco	Pass	1	I taught a 15-person beginner and introductory chess class through Oberlin's “experimental college.”

Spring 2018

COURSE	Grade	Credit Units	Comment
Studies in Electoral Politics – Full	A	4	
Topics in Political Psychology	A-	4	
Political Economy of Development in Asia	A-	4	

Samuel I. Waranch – Oberlin College Undergraduate Transcript

Jewish Budapest: 1850-2018	A-	4	
----------------------------	----	---	--

Fall 2017

COURSE	Grade	Credit Units	Comment
Racial Politics Post-Obama	A	4	
Revolution, Socialism, and Reform in China	A-	4	
The 1960's	A-	4	
Sexuality in Ancient Greece / Rome	A-	4	
Coordinator - Chessco	Pass	1	I taught a 15-person beginner and introductory chess class through Oberlin's "experimental college."

Spring 2017

COURSE	Grade	Credit Units	Comment
History of Antisemitism	A+	4	
Marxian Theory	A-	4	
Contemporary Left Politics	B+	4	
Politics in Africa Since 1980	B	4	

Fall 2017

COURSE	Grade	Credit Units	Comment
American Democracy Election Law & Policy	A-	4	
Themes in Western Art	A-	4	
European Political Theory: Plato-Rousseau	B+	4	
Money, Financial Systems & The Economy	C+	4	
Classical Guitar	Pass	2	

Samuel I. Waranch – Oberlin College Undergraduate Transcript**Spring 2016**

COURSE	Grade	Credit Units	Comment
Geology of Natural Resources	A	4	
Introductory Sociology: Social Stratification, Inequity, and Behavior	B+	4	
Comparative Political Economy in the Middle East	B+	4	
Existentialism	NP	4	

Fall 2015

COURSE	Grade	Credit Units	Comment
Introduction to Peace and Conflict Studies	A-	4	
Principles of Economics	B+	4	
Problems of Philosophy	B	4	
Film Experience: The Cinematic World	B	4	
Introduction to No-Limit Hold'Em Poker Theory	Pass	2	

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

March 23, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Applicant Samuel Waranch

Dear Judge Walker:

I am a faculty member at the University of Pennsylvania Carey Law School and am writing this letter in support of Sam Waranch, who is applying for a clerkship. Sam was a 1L student in my criminal law course in 2020 and he worked as a teaching assistant (TA) for me for the same course in 2022. If you are looking for a clerk who is does high-quality work and is a great team player, Sam would be a great choice. I enthusiastically recommend him.

I approached Sam to work for me as a TA because he was among the top students when he took my course as a 1L. In addition to demonstrating mastery of the class material, Sam also was a consensus-builder in group discussions and prioritized listening to others over pushing out his own views. During his time as a TA, Sam teamed with two other TAs, and he again demonstrated his others-first approach to collaborative work, exhibiting an admirable flexibility and willingness to adapt his efforts to the needs of the group. If there was an assignment that one of the other TAs had a conflict with or didn't feel comfortable completing, Sam was happy to step in to make sure the work was done. He was also responsive to feedback and genuinely interested in identifying ways he could improve and become a better team member.

In addition to doing the normal TA tasks of curating class notes, leading review sessions, and meeting with students, Sam organized and led two supplementary lectures during the term—one summarizing recent empirical studies on prosecutor charging decisions in criminal cases, and another discussing the habeas process in death penalty cases. For the former lecture, he fielded an online survey that provided police reports on a case and asked class members to report how they would charge the case; Sam collected student responses in advance and then compared them to the actual responses of hundreds of prosecutors who completed a similar exercise in a published research study. It was an innovative way to present this material that really engaged the students and got them talking about how prosecutors should and do perform their work. Indeed, the author of the original study on which Sam based his lecture (a professor at another university) requested Sam's lecture materials once she heard about this creative way that he found to present the material.

One thing I particularly appreciated about both of Sam's lectures is that he took the time to explain, before he got into the substantive content of the discussion, the why of what we were learning by clearly outlining for the students how the particular content we would discuss could be useful in their future careers, whether or not they chose to pursue criminal work. Sam's big-picture, strategic way of thinking about the world was more broadly evident in my interactions with him. For example, when we'd talk about a lecture or other assignment, Sam was always very thoughtful about making sure he first clearly understood the end goal we were trying to further through the work before getting into the details of the task. This allowed him to make sure he was closely aligning his day-to-day activities with the broader vision I had for our students' growth throughout the semester.

To summarize, Sam is smart, easy to get along with, and flourishes in a team setting. He will be an excellent clerk and will make a meaningful contribution to any chambers. If you have any questions about Sam or if I can be of further assistance, please don't hesitate to reach out to me.

Warmly,

Paul Heaton
Senior Fellow and Academic Director
Quattrone Center for the Fair Administration of Justice
pheaton@law.upenn.edu
215.746.3353

Paul Heaton - pheaton@law.upenn.edu

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

March 23, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Applicant Samuel Waranch

Dear Judge Walker:

I write regarding Sam Waranch, who has applied to your office for a clerkship. Sam is an exceptionally strong student, among the best in his class. He would make an excellent clerk and serve your chambers well. I endorse him enthusiastically and urge you to hire him.

I had the pleasure to teach Sam in my first-year class Land Use Law and Policy. Even though the class was online due to COVID, it was a very engaged experience, and Sam was one of the most thoughtful participants. Sam was active in our discussions, and his comments made significant contributions. Sam has deep interest in government, and he frequently drew upon his interests and experiences to advance our conversations. His approach to the cases and other materials was particularly rigorous and his analysis consistently creative.

My land use class is a writing intensive one, requiring two papers. Sam's were among the very top in the class. He is a strong, thorough, and thoughtful writer. In his final paper for the class, Sam wrote an excellent analysis of the rules of street access and the constant tensions among the many different users of the streets (residents, businesses, pedestrians and cars being the most active). Sam adeptly wove class materials, primary research, and policy analysis to produce a paper that makes meaningful recommendations for legal reform to mediate these tensions. I was very impressed. As you can see from Sam's transcript, his performance in the law school has been very strong. He is one of the very best students in what the Dean has described as one of the strongest classes in the school's history.

In addition to his scholarly accomplishments, Sam has a deep commitment to public service, and he is active in several law school organizations. Sam is a leader of the law school chapter of the American Constitution Society as well as our high school Mock Trial program, supporting students in learning about our litigation system and developing the critical skills of analysis and oral presentation. Sam spent his 1L summer interning for Judge Michael Shipp, where he received excellent training and further developed his research and writing skills. He will come to your office ready to contribute on his first day.

Sam's passion for public service was developed long before he arrived at Penn. During his college years, he was active in many political and public service activities. Outside of class, I have discussed issues of public policy with him. Sam has spent a great deal of time thinking about the role of government and lawyers in American society, and he has nuanced views on many current issues. I expect Sam to make major contributions to the field of public interest law.

Through several encounters outside of class, I have gotten to know Sam. He is a warm and thoughtful person. He is hard-working, unassuming, supportive of others and clearly well-respected by his peers. I believe that Sam will be a leader in whatever field of law he chooses, and I expect to be bragging about him for years to come. You could not pick a better person for your office.

Please don't hesitate to contact me if I can provide any additional information.

Sincerely,

Wendell E. Pritchett, J.D., Ph.D.
Presidential Professor of Law and Education
pritchet@law.upenn.edu
215-898-7483

Wendell Pritchett - pritchet@law.upenn.edu

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

March 23, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Applicant Samuel Waranch

Dear Judge Walker:

Samuel I. Waranch, a third-year student, is applying for a clerkship position. He was a student in my year-long Visual Legal Advocacy seminar. I came to know Sam well over two semesters. I think he will make an excellent clerk.

The seminar is an unusual one for a law school. The students work in crews and are expected to complete a rough cut of a short advocacy video by the end of the second semester. During class, we discuss pressing local social justice issues that might be suitable topics for a video. We explore the elements of a compelling advocacy video by viewing and critiquing advocacy videos and documentaries, some of which past students produced. Finally, every class session raises questions about the ethical obligations of visual legal advocates collaborating with grassroots activists and claimants who are low-income working people or members of groups that are plagued by unfair discrimination.

Sam Waranch was a frequent contributor to the class discussions and a committed and enthusiastic participant in the production process. He is intelligent, creative, empathetic, and engaged. His resume shows that he is a three-dimensional person. In addition to the many interests and hobbies he lists there, he is an aficionado of documentaries and possesses production skills. He came up with his crew's topic, Philadelphia's regulation of streeteries, i.e., the outdoor restaurant sheds that arose after covid restrictions barred or limited indoor dining.

Sam Waranch has gained experience beyond the classroom that confirms his stated ambition to become a litigator with a public interest-oriented practice. Helping people without equal access to the law is consistent with his "family values." Sam's career choice is inner-driven, not based on what everyone else is doing. During his externship with the federal defender office in Philadelphia, he worked on capital cases involving gruesome murders and defendants with serious mental illnesses. He found the work emotionally taxing and difficult to do while still a law student but meaningful and impactful.

During his district court summer internship, Sam discovered that law clerks could makeworthy contributions to a judge's opinions. Working in chambers was exciting and enjoyable, and Sam developed a passion for and confidence in writing and researching. I can confirm that Sam is a good listener. He works well in a team. Sam is friendly and gets along well with other people. He may offer candid and contrary opinions in a discussion, but he does so in a courteous manner. Sam is respectful of authority and knows that what the judge says goes. Finally, he served as a teaching assistant for one of the 1L Criminal Law professors. He finds criminal law intellectually engaging because he likens its tactics and strategies to chess. Not taken by the allure of a big firm job paying "big bucks," Sam may have found his calling in criminal law.

I hope that you will give Sam Waranch's application serious consideration. If you have any questions regarding this recommendation, please feel free to contact me via email at raustin@law.upenn.edu or by phone at 215-932-9832.

Very truly yours,

Regina Austin
William A. Schnader Professor
Director, Penn Program on
Documentaries & the Law
Tel: 215-898-5185
Email: raustin@law.upenn.edu

Regina Austin - raustin@law.upenn.edu - 215-898-5185

Samuel I. Waranch

1904 Pine St. Apt. 1 Philadelphia PA, 19103 • (972) 742-9005 • swaranch@upenn.pennlaw.edu

Writing Sample: Cover Sheet

The attached writing sample represents my final version of an opinion. I wrote it during my first-year summer judicial internship. To preserve confidentiality, citations to the record, the parties' names, dates, and the judge's name have been changed. I conducted all the research for this assignment independently; the writing is mine alone.

NOT FOR PUBLICATION**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ROBIN'S RESTAURANT, INC.

Plaintiff,

v.

WESTERN INSURANCE GROUP,

Defendant.

Civil Action No. 21-12345 (KMJ)

DRAFT OF MEMORANDUM OPINION**JONES, District Judge**

This matter comes before the Court upon Defendant Western Insurance Group's ("Defendant") Motion to Dismiss Plaintiff Robin's Restaurant ("Plaintiff") Complaint. (ECF No. 4.) Plaintiff opposed (ECF No. 8), and Defendant replied (ECF No. 12). The Court has carefully considered the parties' submissions and decides the matter without oral argument pursuant to Local Rule 78.1. For the reasons set forth herein, Defendant's Motion to Dismiss is granted.

I. BACKGROUND

This case is one of many emerging COVID-19-related insurance disputes. Plaintiff owns and operates a chain of sit-down restaurants throughout New Jersey. (Complaint ¶ 11, ECF No. 1.) Defendant is an insurance company based in New York. (*Id.* ¶ 12.) From July 15, 2019, to July 15, 2020, Defendant insured Plaintiff for business interruption losses, including "business personal property, business income and extra expense, [and] contamination coverage," through their insurance policy (the "Policy"). (*Id.* ¶ 18.) According to Plaintiff, "[t]he Policy is an all-risk policy,

insofar as it provides that covered perils under the policy means physical loss or physical damage unless the loss is specifically excluded or limited in the Policy.” (*Id.* ¶ 24.)

On March 9, 2020, New Jersey Governor Phil Murphy “issued a Proclamation of Public Health Emergency and State of Emergency, the first formal recognition of an emergency situation in the State of New Jersey as a result of COVID-19.” (*Id.* ¶ 52.) Shortly thereafter, Governor Murphy issued orders requiring non-essential businesses to cease operations and close all physical locations followed by a Stay-at-Home Order for all residents of New Jersey. (*Id.* ¶ 55.) These orders required the closure of the “brick-and-mortar premises of all non-essential retail businesses . . . as long as th[e] Order remains in effect.” (*Id.* ¶ 56.) Plaintiff complied with these orders and suspended its operations. (*Id.* ¶ 59.) Plaintiff alleges that its “compliance with these mandates resulted in [it] suffering business losses, business interruption[,], and extended expenses of the nature that the Policy covers and for which [its] reasonable expectation was that coverage existed in exchange for the premiums paid.” (*Id.* ¶ 61.)

Plaintiff, subsequently, submitted a claim for business losses pursuant to the Policy, but Defendant rejected the claim. (*See generally* Claim Denial Letter, ECF No. 2-8.) On November 14, 2020, Plaintiff filed the instant four-count action against the Defendant. (*See generally* Complaint.) Count One asserts a claim for declaratory relief. Plaintiff argues that Governor Murphy’s orders trigger coverage under the policy and that “the Policy provides coverage to Plaintiff for any current and future closures of businesses such as Plaintiff’s due to physical loss or damage and the policy provides business income coverage in the event that a loss or damage at the Insured Properties has occurred.” (*Id.* ¶¶ 68, 73.) Counts Two through Four assert claims for breach of contract based on Defendant’s denial of coverage under the Policy’s Business Income, Extra Expense, and Civil Authority Endorsements. (*Id.* ¶¶ 83-108.)

II. LEGAL STANDARD

Rule 8(a)(2)¹ “requires only a ‘short and plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

When analyzing a Rule 12(b)(6) motion to dismiss, the district court conducts a three-part analysis. *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011). First, the court must “tak[e] note of the elements a plaintiff must plead to state a claim.” *Ashcroft v. Iqbal*, 556 U.S. 662, 675 (2009). Second, the court must accept as true all of a plaintiff’s well pleaded factual allegations and construe the complaint in the light most favorable to the plaintiff. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). The court, however, may ignore legal conclusions or factually unsupported accusations that merely state “the-defendant-unlawfully-harmed-me.” *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Finally, the court must determine whether the “facts alleged in the complaint are sufficient to show that the plaintiff has a ‘plausible claim for relief.’” *Fowler*, 578 F.3d at 211 (quoting *Iqbal*, 556 U.S. at 679). A facially plausible claim “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 210 (quoting *Iqbal*, 556 U.S. at 678). On a motion to dismiss for failure to state a claim, the “defendant bears the burden of showing that no claim has been presented.” *Hedges v. United States*, 404 F.3d 744, 750 (3d Cir. 2005).

III. DISCUSSION

Both Plaintiff and Defendant agree that New Jersey law controls in this case. The question at issue here is the proper interpretation of the Policy. Under New Jersey Law, the

¹ All references to a “Rule” or “Rules” hereinafter refer to the Federal Rules of Civil Procedure.

interpretation of a contract is a question of law. *Buczek v. Cont'l Cas. Ins. Co.*, 378 F.3d 284, 288 (3d Cir. 2004). In the instant case, Defendant's "All-Risk" Policy does not contain a "virus exclusion" which this court and others in the district have routinely enforced as barring coverage for COVID-19 related claims. See *Quakerbridge Early Learning LLC v. Selective Ins. Co. of New England*, 2021 WL 1214758, at *4 (D.N.J. Mar. 31, 2021); *Benamax Ice, LLC v. Merch. Mut. Ins. Co.*, 2021 WL 1171633, at *4 (D.N.J. Mar. 29, 2021); *Chester C. Chianese DDS LLC v. Travelers Cas. Ins. Co. of Am.*, 2021 WL 1175344, at *1 (D.N.J. Mar. 27, 2021). The Court's job is thus to interpret the Policy to determine if coverage is appropriate in the absence of such an exclusion.

In interpreting insurance contracts under New Jersey Law, the state has routinely held that "[a]n insurance policy is a contract that will be enforced as written when its terms are clear in order that the expectations of the parties will be fulfilled." *Flomerfelt v. Cardiello*, 997 A.2d 991, 996 (N.J. 2010). "In attempting to discern the meaning of a provision in an insurance contract, the plain language is ordinarily the most direct route." *Chubb Custom Ins. Co. v. Prudential Ins. Co. of Am.*, 948 A.2d 1285, 1289 (N.J. 2008). "If the language is clear, that is the end of the inquiry." *Id.* "If the plain language of the policy is unambiguous," the Court should not engage in a strained analysis to "support the imposition of liability or write a better [contract] . . . than the one purchased." *Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 129 A.3d 1069, 1075 (N.J. 2016) (quoting *Chubb*, 948 A.2d at 1289). Finally, "[e]xclusionary clauses are presumptively valid and are enforced if they are 'specific, plain, clear, prominent, and not contrary to public policy.'" *Flomerfelt*, 997 A.2d 991, 996 (N.J. 2010) (quoting *Princeton Ins. v. Chunmuang*, 698 A.2d 9, 17 (N.J. 1997)). Plaintiff's breach of contract and declaratory judgment claims thus require it to establish that they are "entitled to coverage

within the basic terms of the [Policy].” *Ralph Lauren Corp. v. Factory Mut. Ins. Co.*, 2021 WL 1904739, at *3 (D.N.J. May 12, 2021) (internal quotations and citation omitted).

The parties dispute the proper interpretation of the Policy whose coverage is triggered by “direct physical loss of or damage to” the covered properties. The Business Income endorsement explains that,

[w]e will pay for the actual loss of Business Income you sustain due to the necessary ‘suspension’ of your ‘operations’ during the ‘period of restoration.’ The ‘suspension’ must be caused by direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss.

(Policy *52.) Similarly, the Extra Expense Endorsement states that “Extra Expense means reasonable and necessary expenses you incur during the ‘period of restoration’ that you would not have incurred if there had been no direct physical loss of or damage to property caused by or resulting from a Covered Cause of Loss.” (*Id.* at *53.) The Civil Authority Provision likewise conditions coverage on “direct physical loss of or damage to property at locations, other than described premises, caused by or resulting from a Covered Cause of Loss.” (*Id.* at *79.)

Plaintiff alleges breach of contract for Defendant’s denial of coverage for its COVID-19 related losses under either the Business Income, Extra Expense, or Civil Authority endorsements of the Policy. Defendant challenges coverage under these endorsements.

A. Loss of Use of Covered Property Stemming from Government Orders Does Not Constitute Direct Physical Loss or Damage.

A plain reading of the unambiguous language of the Policy reveals that coverage is conditioned for “physical loss of or damage” to covered property caused by or resulting from a “Covered Cause of Loss.” Plaintiff alleges that orders preventing use of their covered properties

amounts to physical loss or damage because of COVID-19 or the apparent future threat of it. (Comp. ¶¶ 27, 35, 59-60.)

In the instant case, Plaintiff’s complaint fails to allege specific COVID-19 contamination. When the “[c]omplaint lacks any allegations about the existence of anything affecting the physical condition of its premises . . . its losses are a loss of use untethered from the physical condition of the property itself.” *TAQ Willow Grove, LLC. v. Twin City Fire Ins.*, 2021 WL 131555, at *5 (E.D. Pa. Jan. 14, 2021); *See also SSN Hotel Mgmt., LLC. v. Harford Mut. Ins. Co.*, No. 20-6228, 2021 WL 1339993, at *4 (E.D. Pa. Apr. 8, 2021). “[T]hese allegations are insufficient.” *Ralph Lauren Corp. v. Factory Mut. Ins. Co.*, No. 20-010167, 2021 WL 1904739, at *3 (D.N.J. May 12, 2021); *See also Mac Prop. Grp. LLC. v. Selective Fire & Cas. Ins. Co.*, No. L-2629-20, 2020 WL 7422374, at *8–9 (N.J. Super. Ct. Nov. 5, 2020) (finding “no direct physical loss or damage to property” resulting from an “order of civil authority” addressing COVID-19).

As more and more courts deal with COVID-19 related insurance claims, the consensus that has emerged in this circuit is that the loss of use of covered properties stemming from a civil authority order is insufficient to cause direct physical loss or damage. In *Port Authority of New York and New Jersey*, the third circuit addressed the interpretation of the phrase “direct physical loss or damage” under New Jersey law in the context of insurance claims for asbestos damage. *See Port Auth. Of N.Y. & N.J. v. Affiliated FM Ins. Co.*, 311 F.3d 226, 235 (3d Cir. 2002). The Court concluded that physical damage to property meant “distinct, demonstrable, and physical alteration of its structure.” *Id.* (quoting 10 Couch on Ins. §148:46 (3d ed. 1998)). Damages by things unnoticeable to the naked eye must meet a higher standard than those that can easily damage a building. *Id.* at 235.

The line of cases Interpreting *Port Authority* in the context of COVID-19 related insurance disputes clearly “are instructive on whether the threat of COVID-19 constitutes ‘direct physical loss or direct physical damage to property.’” These [recent] decisions have **almost uniformly concluded that such a threat does not trigger insurance coverage.**” *Hair Studio 1208, LLC v. Hartford Underwriters Insur. Co.*, No. 20-2171, 2021 WL 1945712, at *7 (E.D. Pa. May 14, 2021) (emphasis added); *See, e.g., Id.; Ralph Lauren Corp. v. Factory Mut. Ins. Co.*, No. 20-010167, 2021 WL 1904739, at *3 (D.N.J. May 12, 2021); *Paul Glat MD, P.C. v. Nationwide Mut. Ins. Co.*, No. 20-5271, 2021 WL 1210000, at *5–6 (E.D. Pa. Mar. 31, 2021); *Chester Cty. Sports Arena v. The Cincinnati Specialty Underwriters Ins. Co.*, 2021 WL 1200444, at *7 (E.D. Pa. Mar. 30, 2021).

In response to Defendant’s motion to dismiss, Plaintiff cites out of circuit decisions to support the proposition that “a condition that renders property unsuitable for its intended use constitutes a direct physical loss” (Pl.’s Opp’n Br. *13). Plaintiff alleges that even “fear of damage can be a direct physical loss.” (*Id.*) To support this, Plaintiff solely cites *Studio 417*. *See Studio 417 Inc. v. Cincinnati Ins. Co.*, 2020 WL 4692385 (W.D. Mo. Aug. 12, 2020); (Pl.’s Opp’n Br. 14, 16, 19.) The vast majority of cases that have emerged since *Studio 417* have explicitly rejected this approach. *See, e.g., Zwilllo V, Corp. v. Lexington Insur. Co.*, 504 F. Supp. 3d 1034 (W.D. Mo. Dec. 02, 2020); *1 S.A.N.T., Inc. v. Berkshire Hathaway, Inc.*, 2021 WL 147139, at *6–7 (W.D. Pa. Jan. 15, 2021). The Court will not deviate from the recent line of reasoning employed in this circuit and fails to find coverage stemming from Plaintiff’s “loss of use” of covered properties.

B. Plaintiff Has Failed to Allege that COVID-19 Has Caused Direct Physical Loss or Damage to Covered Properties.

Plaintiff alternatively contends that their covered restaurants have experienced a covered cause of loss from direct COVID-19 contamination because “Plaintiff alleges that its insured property is at imminent risk of coronavirus contamination, or it may have already been contaminated and that surrounding property has been contaminated.” (Pl.’s Opp’n Br. 18-19, Complaint ¶¶ 27, 56-59.) Plaintiff argues that “clear evidence of the coronavirus being present throughout the state, its presence in and around Plaintiff’s insured properties, and the severe safety risks associated with allowing individuals to come in[to]” close contact with one another is sufficient to warrant a finding that COVID-19 has damaged the covered properties. (Reply 19, Complaint ¶¶ 58-59.)

In its complaint, however, Plaintiff never offers specific factual allegations about COVID-19 damaging its restaurants or other properties near its restaurants. In fact, “[p]laintiff does not seek any determination whether the Coronavirus is physically in or at the Insured Properties” (Complaint ¶ 70.) Plaintiff instead alleges that its premises are unsafe solely because of the inevitability of individuals being near one another. (Comp. ¶ 60.)

Plaintiff’s conclusory allegations, relying on the pervasiveness of COVID-19 throughout New Jersey, are insufficient to trigger coverage under the Business Income, Extra Expense, or Civil Authority Endorsements and survive a 12(b)(6) motion. This is because “[e]ach of the coverage provisions Plaintiff relies on specifically require ‘direct physical loss or damage’ to trigger the Policy . . . Plaintiff has not alleged any facts that support a showing that its property was physically damaged.” *Boulevard Carroll Entm’t Grp., Inc. v. Fireman’s Fund Ins. Co.*, 2020 WL 7338081, *2 (D.N.J. Dec. 14, 2020). This Court agrees with the *Boulevard Carroll* Court and fails to find a sufficient factual basis to conclude that its covered properties suffered a loss

caused directly from COVID-19 contamination or, in the case of the Civil Authority Endorsement, to surrounding property.

However, even if Plaintiff properly alleged the existence of COVID-19 contamination at covered properties, this would not be enough to support coverage under the Policy. This is because “the presence of a virus that harms humans but does not physically alter structures does not constitute coverable property loss or damage.” *7th Inning Stretch LLC v. Arch Ins. Co.*, 2021 WL 1153147, at *2 (D.N.J. Mar. 26, 2021); *See also Handel v. Allstate Ins. Co.*, 2020 WL 645893, at *3 (E.D. Pa. Nov. 6, 2020) (relying on *Port Auth. of New York & New Jersey v. Affiliated FM Ins. Co.*, 311 F.3d 226, 235 (3d Cir. 2002)) (noting that physical loss or damage requires “that the functionality of the property ‘was nearly eliminated or destroyed’ or the ‘property was made useless or uninhabitable’”). Plaintiffs’ claims, even if properly plead, would still be insufficient.

The Court is sympathetic to the plight of business owners in the wake of the COVID-19 pandemic; however, it will not deviate from the weight of authority in construing identical contract language to “rewrite the contract for the benefit of either party.” *Del. Valley Plumbing*, 2021 WL 567994, at *7. The Court, accordingly, grants Defendants’ Motion to Dismiss.

IV. CONCLUSION

For the reasons set forth above, Defendants’ Motion to Dismiss is granted. The Court will enter an Order consistent with this Memorandum Opinion.

Applicant Details

First Name **Wesley**
 Last Name **Ward**
 Citizenship Status **U. S. Citizen**
 Email Address wesleybward@gmail.com
 Address

Address

Street
308 Packard St. Apt. 6
 City
Ann Arbor
 State/Territory
Michigan
 Zip
48104
 Country
United States

Contact Phone Number **3098303879**

Applicant Education

BA/BS From **Illinois State University**
 Date of BA/BS **May 2017**
 JD/LLB From **The University of Michigan Law School**
<http://www.law.umich.edu/currentstudents/careerservices>
 Date of JD/LLB **May 6, 2023**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **University of Michigan Journal of Law Reform**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Global Antirutst Institute Moot Court**
Campbell Moot Court

Bar Admission

Prior Judicial Experience

Judicial Internships/
Externships **No**
Post-graduate Judicial
Law Clerk **Yes**

Specialized Work Experience

Specialized Work
Experience **Bankruptcy**

Recommenders

Mortenson, Julian
jdmorten@umich.edu
734-763-5695
Pottow, John
pottow@umich.edu
734-647-3736
Salim, Oday
osalim@umich.edu
7347637087

This applicant has certified that all data entered in this profile and any application documents are true and correct.

April 08, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a third-year law student at the University of Michigan, and I am writing to apply for a clerkship in your chambers for the 2024-2025 term.

I am a competitive distance runner and a Type 1 diabetic. Balancing the rigors of law school with training and managing a chronic illness has taught me to be highly organized, diligent, and resourceful. These traits allowed me to succeed in my jobs before law school, where working as a legislative assistant and in political advertising, I utilized my ability to adjust to sudden changes and take ownership of large projects.

My internships with the Consumer Protection Bureau of the New York Attorney General's Office and the National Consumer Law Center have strengthened my desire to be a public interest litigator. After law school, I will clerk in the U.S. Bankruptcy Court for the District of Delaware for Judge Craig T. Goldblatt. There, I hope to improve my legal research skills, engage with cutting-edge corporate bankruptcies, and gain experience with complicated commercial litigation that affects consumers. A further clerkship in your chambers will allow me to further refine my writing skills and immerse myself in a wider range of legal issues.

I have attached my résumé, transcripts, writing sample, and letters of recommendation from the following professors:

- Professor Julian Mortenson: jdmorten@umich.edu, (734) 763-5695;
- Professor John A.E. Pottow: pottow@umich.edu, (734) 647-3736; and
- Clinical Professor Oday Salim: osalim@umich.edu, (586) 255-857.

Thank you for your time and consideration.

Sincerely,

Wesley B. Ward

Wesley B. Ward

308 Packard Street, Apartment 6, Ann Arbor, Michigan 48104
(309) 830-3879 • wward@umich.edu

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL

Ann Arbor, Michigan

Juris Doctor

Expected May 2023

Journal: Michigan Journal of Law Reform, *Executive Editor*, Vol. 56

Activities: Research Assistant to Professor John A.E. Pottow; Global Antitrust Institute Moot Court Competition, *Quarterfinalist* (2023); Henry M. Campbell Moot Court Competition, *Participant* (2022), *Marshal* (2020-21); Environmental Law and Sustainability Clinic at Michigan Law (2022)

ILLINOIS STATE UNIVERSITY

Normal, Illinois

Bachelor of Science in Finance, *summa cum laude* and *Bachelor of Arts* in Political Science, *summa cum laude*

December 2017

Honors: Student Laureate of The Lincoln Academy of Illinois (2017) (one student honored from each Illinois university)
Robert G. Bone Scholarship (2017) (top academic honor at Illinois State)

Activities: Division I Cross-Country/Track & Field; Department of History Research Assistant

EXPERIENCE

U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

Wilmington, Delaware

Incoming Law Clerk for the Honorable Craig T. Goldblatt

September 2023 – September 2024

OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA

Washington, D.C.

Pro Bono Research Lead

November 2022 – Current

- Directed a team of four Michigan Law students in researching and writing a substantive memo for the Office of Consumer Protection and coordinated our progress with supervisors in the District of Columbia and California.

NATIONAL CONSUMER LAW CENTER

Boston, Massachusetts

Summer Intern

May 2022 – August 2022

- Wrote articles addressing emerging legal theories to tackle problems faced by Fair Debt Collection Practices Act plaintiffs in gaining access to federal courts.
- Analyzed over 1,200 complaints from the Consumer Financial Protection Bureau's database regarding consumers' difficulties with rental debt collectors, culminating in drafting a 20-page white paper for NCLC.

OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL

New York, New York

Summer Intern, Consumer Frauds and Protection Bureau

June 2021 – July 2021

- Researched complex legal issues and drafted memoranda in preparation for litigation against small business loan providers and automobile loan providers engaged in illegal conduct.
- Analyzed and summarized materials provided by whistleblowers in an investigation of a for-profit college, and drafted document requests sent to the target of that investigation.

STATE OF ILLINOIS

Springfield, Illinois

Legislative Assistant to State Senator Ram Villivalam

November 2019 – August 2020

- Coordinated Senator Villivalam's capitol activities including filing legislation and meetings with stakeholders.
- Educated constituents on the latest local, state, and federal agency programs to help working people and small businesses during the pandemic-related economic downturn.

THREE POINT MEDIA

Chicago, Illinois

Production Assistant

May 2018 – December 2018

- Produced television advertisements for political campaigns with budgets from \$100 thousand to over \$25 million, including high-profile congressional, and gubernatorial campaigns in a high-pressure environment.

ADDITIONAL

Interests: Competitive marathon running and Type 1 Diabetes advocacy.

Volunteer: United Community Housing Coalition (2020-21), ALS Association (2019), The Immigration Project (2017).

Control No: E196912401

Issue Date: 06/06/2023

Page 1

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Ward, Wesley Barnes
Student#: 44896496



Paul R. Johnson
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Grade
---------	---------------	----------------	--------------	------------	------------	--------------	-----------------	-------

Fall 2020 (August 31, 2020 To December 14, 2020)

LAW	510	002	Civil Procedure	Nicholas Bagley	4.00	4.00	4.00	B+
LAW	520	004	Contracts	Nicolas Cornell	4.00	4.00	4.00	B+
LAW	530	001	Criminal Law	David Moran	4.00	4.00	4.00	B+
LAW	593	008	Legal Practice Skills I	Nancy Vettorello	2.00		2.00	S
LAW	598	008	Legal Pract:Writing & Analysis	Nancy Vettorello	1.00		1.00	S

Term Total	GPA: 3.300	15.00	12.00	15.00
Cumulative Total	GPA: 3.300		12.00	15.00

Winter 2021 (January 19, 2021 To May 06, 2021)

LAW	540	001	Introduction to Constitutional Law	Julian Davis Mortenson	4.00	4.00	4.00	A-
LAW	569	001	Legislation and Regulation	Daniel Deacon	4.00	4.00	4.00	A-
LAW	580	001	Torts	Roseanna Sommers	4.00	4.00	4.00	B+
LAW	594	008	Legal Practice Skills II	Nancy Vettorello	2.00		2.00	S

Term Total	GPA: 3.566	14.00	12.00	14.00
Cumulative Total	GPA: 3.433		24.00	29.00

Continued next page >

This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

A BLACK AND WHITE TRANSCRIPT IS NOT AN ORIGINAL

Control No: E196912401

Issue Date: 06/06/2023

Page 2

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Ward, Wesley Barnes
Student#: 44896496



Paul R. Larson
University Registrar

Course	Section	Load	Graded	Towards	Credit			
Subject	Number	Number	Course Title	Instructor	Hours	Hours	Program	Grade
Fall 2021 (August 30, 2021 To December 17, 2021)								
LAW	637	001	Bankruptcy	John Pottow	4.00	4.00	4.00	A-
LAW	675	001	Federal Antitrust	Daniel Crane	3.00	3.00	3.00	A
LAW	741	004	Interdisc Prob Solv	Barbara Mcquade	3.00	3.00	3.00	A
			Identity Theft: Causes and Countermeasures	Bridgette Carr				
				Florian Schaub				
LAW	768	001	21st C. Infrastr/Lawyer's Role	Andrew Doctoroff	2.00	2.00	2.00	A
LAW	885	001	Mini-Seminar	Nicolas Cornell	1.00	1.00	1.00	S
			American Ecological Writings					
LAW	900	133	Research	Barbara Mcquade	2.00	2.00	2.00	A
Term Total				GPA: 3.914	15.00	14.00	15.00	
Cumulative Total				GPA: 3.610		38.00	44.00	
Winter 2022 (January 12, 2022 To May 05, 2022)								
LAW	716	001	Complex Litigation	Maureen Carroll	4.00	4.00	4.00	A
LAW	803	001	Advocacy for Underdogs	Andrew Buchsbaum	2.00	2.00	2.00	A
LAW	930	001	Env'tl Law & Sustain Clinic	Oday Salim	4.00	4.00	4.00	A-
LAW	931	001	Env'tl Law & Sustain Cln Sem	Oday Salim	3.00	3.00	3.00	A-
Term Total				GPA: 3.838	13.00	13.00	13.00	
Cumulative Total				GPA: 3.668		51.00	57.00	

Continued next page >

This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

A BLACK AND WHITE TRANSCRIPT IS NOT AN ORIGINAL

Control No: E196912401

Issue Date: 06/06/2023

Page 3

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Ward, Wesley Barnes
Student#: 44896496



Paul R. Johnson
University Registrar

UNIVERSITY OF MICHIGAN · UNIVERSITY OF						
--	--	--	--	--	--	--

End of Transcript
Total Number of Pages 3

This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

A BLACK AND WHITE TRANSCRIPT IS NOT AN ORIGINAL

University of Michigan Law School Grading System

Honor Points or Definitions

Through Winter Term 1993	Beginning Summer Term 1993
A+ 4.5	A+ 4.3
A 4.0	A 4.0
B+ 3.5	A- 3.7
B 3.0	B+ 3.3
C+ 2.5	B 3.0
C 2.0	B- 2.7
D+ 1.5	C+ 2.3
D 1.0	C 2.0
E 0	C- 1.7
	D+ 1.3
	D 1.0
	E 0

Other Grades:

- F Fail.
- H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.
- I Incomplete.
- P Pass when student has elected the limited grade option.*
- PS Pass.
- S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)
- T Mandatory pass when student is transferring to U of M Law School.
- W Withdrew from course.
- Y Final grade has not been assigned.
- * A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

Third Party Recipients

As a third party recipient of this transcript, you, your agents or employees are obligated by the Family Rights and Privacy Act of 1974 not to release this information to any other third party without the written consent of the student named on this Cumulative Grade Report and Academic Record.

Official Copies

An official copy of a student's University of Michigan Law School Cumulative Grade Report and Academic Record is printed on a special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required. A black and white is not an original. Any alteration or modification of this record or any copy thereof may constitute a felony and/or lead to student disciplinary sanctions.

The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records
University of Michigan Law School
625 South State Street
Ann Arbor, Michigan 48109-1215
(734) 763-6499

MICHIGAN LAW
UNIVERSITY OF MICHIGAN
701 South State Street
Ann Arbor, MI 48109-3091

JULIAN DAVIS MORTENSON
James G. Phillipp Professor of Law

April 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write with an enthusiastic recommendation of my student Wes Ward for a clerkship in your chambers. Wes is an incisive thinker, an earnest believer in public service, and a thoughtful and other-oriented human being. He'd be a terrific addition to your clerkship class both for the substance of his work and for his team play in chambers.

I first got to know Wes as a student in my first-year constitutional law class in the winter semester of 2021. Even in the somewhat odd hybrid circumstances of the class, Wes stood out from early on in the semester, in part because of his sheer command of the material on cold call, and in part because he attended every office hours bursting with questions for me—and enthusiasm for his classmates' perspective. He's the kind of person who is so intrinsically interested in the ideas being engaged with that the sheer intellectual generosity of his curiosity and enthusiasm is infectious. I came to think of him as part of the "glue" that would hold office hours conversations together, always finding a way to stitch together something Person A said with something Person B had said earlier. He had a way of doing this that was both useful and also made the conversation—all of which was taking place over Zoom, at least for office hours—feel more integrated and less like a series of one-off Q&A interventions

Wes did a terrific job on the exam, turning in a thorough, careful, insightful and creative set of responses to the essay questions—written with a clear and incisive style that made it easy to follow his analysis of even the most complicated questions. I was struck in particular by his discussion of a fact pattern involving Covid-related restrictions and requirements for a state bar exam; I had intended the question principally to test equal protection concepts, but in addition to thoroughly airing those issues, Wes went on to identify a very interesting set of Dormant Commerce Clause issues that I hadn't anticipated coming out of anyone's responses. It was a really impressive job.

Wes has come to law school with a strong sense of public service mission—the sort of earnest and realistic commitment to dedicating his career to helping others that is especially inspiring to encounter as a teacher. He worked before law school at a legal non-profit for low-income migrants, and has devoted much of his law school time—in the classroom, in extra-curriculars, and in the summers—to exploring a wide range of government and public interest career possibilities. He remains open to many public service possibilities, but it seems to me that the question of consumer protection occupies a place particularly close to his heart. In part this is because of his work experience at places like the New York Consumer Fraud and Protection Bureau, but more fundamentally I think it is connected to his own sense for the vulnerability of families facing hard questions about difficult situations. His father was diagnosed with ALS several years ago, and the process of trying to find treatments for what is an all-but-hopeless diagnosis opened Wes's eyes to the ways that consumer protection implicates some of the most vulnerable social relationships that exist. I really look forward to seeing where these interests take Wes over the course of his career, and I am confident that we can expect great contributions from him for decades to come.

I hope it's clear that I hold Wes in high regard, both personally and academically. Please don't hesitate to let me know if I can answer any questions or otherwise help you assess his candidacy in any way.

Best regards,

Julian Davis Mortenson
James G. Phillipp Professor of Law
Michigan Law School

Julian Mortenson - jdmorten@umich.edu - 734-763-5695

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL
625 S. State Street
ANN ARBOR, MICHIGAN 48109-1215

John A. E. Pottow
Professor of Law

TELEPHONE: (734) 647-3736
FAX: (734) 764-8309
E-MAIL: pottow@umich.edu

April 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is a pleasure to recommend Wesley Ward for a judicial clerkship. Wesley was in my bankruptcy class this past year at Michigan Law and he distinguished himself both in class and on the examination (blindly-graded). He demonstrated not just a sharp mind but a voracious interest in the policy, especially behind the consumer bankruptcy system. He clearly has strong passions for consumer protection and financial regulation. I did not know of his prior experience in public service, but learning of it after the fact confirms the positive impressions I developed during my class.

But rather than his law school successes, what I'd like to comment on briefly regards his non-law school "personal story," which may not come through from review of his transcript. As a young man, Wes had to confront the devastating news of his father's ALS diagnosis. He moved across country from Illinois to North Carolina to help care for his father. He did so until his own care was not enough and his father for his final days had to go into a professional setting. Losing his parent after having uprooted a fledgling career did not phase Wes, as he applied to law school during all this and came to Michigan. He just did the right thing and carried on.

After an understandably shaky start—and let me be clear, I just mean B+/average start, not bad—Wes started to find himself when he got to choose courses of his own; you can see on even a cursory review of his transcript the inexorable upward march of his grades. Now, if you want someone who was editor-in-chief of the law review, Wes will not be your guy. He's smart and did well in my class, but he was not legendary. But if you want someone who not only mastered a complex statutory code but also went beyond it to interrogate its deep structure (or lack thereof) for richer understanding and analysis, then he could be a great fit.

He's a humble, modest, and caring young man. It's impossible to imagine him not fitting in well in any chambers. I recommend him unhesitatingly.

If I can be of any further questions in this matter, please reach out at your convenience.

Very truly yours,

John A. E. Pottow

John Pottow - pottow@umich.edu - 734-647-3736

April 08, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

For the clerkship position, I highly recommend Wes Ward to you. Wes's analytic skills, writing abilities, and research persistence would greatly benefit your chambers.

Wes was a student in my Environmental Law & Sustainability Clinic. The Clinic provides students the opportunity to manage real cases for real clients. In the context of practicing energy, environmental, and conservation law, we focus on the following skills: writing for diverse audiences; research efficiency; representing organizational clients; and negotiation. In Winter 2022, he was enrolled in the clinic, which consists of a seminar class and case work.

Under my supervision, Wes represented two nonprofit organizations for whom he developed a litigation plan to address a facility that was polluting Lake Superior. Wes had to research a myriad of topics, including the public trust doctrine and water quality permitting. His research was meticulous and persistent. For his common law research, he efficiently found the most helpful and harmful case law. For his regulatory research, he thoroughly explored a dense complicated administrative scheme. When he hit a roadblock, he did not give up – he came to me with questions, returned to the research, and did not give up until he found what he needed.

Wes was a very good writer and analyst. He was thoughtful about core writing mechanics like organization, topic sentences, and matching his propositions with sufficient supporting evidence. He edited his memos effectively based on his own assessment and supervisor review. He always worked to see the legal forest from the trees of cases, statutes, and regulations.

Aside from being a good researcher, writer, and analyst, Wes had exemplary work ethic and a professional demeanor. He was punctual, communicated regularly, and was always prepared for meetings. He worked very well with his teammate. Perhaps most importantly, his clients were incredibly pleased with his work.

Wes's ability to engage in high level objective analysis and writing, combined with his work ethic and personality, make it easy for me to recommend him without reservation. If you wish to further discuss, please contact me anytime at osalim@umich.edu or 586-255-8857.

Sincerely yours,

Oday Salim
Director, Environmental Law & Sustainability Clinic

Oday Salim - osalim@umich.edu - 7347637087

Wesley B. Ward

308 Packard Street, Apartment 6, Ann Arbor, Michigan 48104
(309) 830-3879 • wward@umich.edu

WRITING SAMPLE

I prepared this appellate opinion during the fall semester of 2022 for a Judicial Clerkships practice simulation. The case involved a fictitious high-school student who sought to place advertisements on Cleveland's public transit vehicles. Her application was rejected, then she filed suit on First Amendment grounds. Professor Kerry Kornblatt provided editorial suggestions, but this writing sample reflects my own work.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GREATER CLEVELAND
REGIONAL TRANSIT
AUTHORITY (RTA) and
JOSEPH CALABRESE,
individually in his official
capacity as General Manager
and Chief Executive Officer of
the RTA

Defendants-Appellants,

v.

KATHERINE FISHER, through
her parent and guardian NOAH FISHER

Plaintiff-Appellee.



No. 22-16123

Appeal from the United States District Court for the Northern District of Ohio at
Cleveland.
No. 22-cv-16123—Diane L. Clayton, District Judge.

Defendants Greater Cleveland Regional Transit Authority (RTA) and Joseph Calabrese appeal the district court's order granting a motion for preliminary injunction. Plaintiff-Appellee Katherine Fisher proposed an advertisement to appear on Defendant's vehicles, which RTA rejected for violating two of its policies. Ms. Fisher and her father sought a preliminary injunction relief requiring Defendant to display the advertisement, which the district court granted. We REVERSE the district court's order and REMAND with instructions that the Plaintiff's complaint be dismissed.

I. Background

A. Defendant-Appellant's Advertising Program

Defendant-Appellant Greater Regional Transit Authority (RTA) allows advertisements to appear on its vehicles, given the advertisements comply with certain policies. Defendant-Appellant Joseph Calabrese is the CEO and general manager of RTA and has overseen RTA's advertising program since its inception. R. 030. Proposed advertisements are submitted to a contractor who performs preliminary tasks, like providing the customer with a price estimate. *Id.* Each month, the contractor sends the proposed advertisements to Calabrese for review, who makes the final determination about whether the advertisements comply with RTA policy. *Id.*

RTA's advertising program seeks to "provide revenue for RTA while at the same time maintaining RTA ridership and assuring riders will be afforded a safe and pleasant environment." R. 042. Maintaining and increasing ridership sustains the financial health of the transit system, Mr. Calabrese argued, and that depends on riders having pleasant experiences. R. 037. RTA reserved the right to approve all advertising and displays through this program while prohibiting eight categories of advertisements including those that:

- a. Depict or promote an illegal activity.
- b. Contain false, misleading, or deceptive material.
- ...
- e. Are scornful of an individual or a group of individuals.
- ...

- g. Support or oppose the election of any political candidate.
- h. Contain material which is obscene or sexually explicit, as defined by Ohio law.

R. 042. Mr. Calabrese contends that the provisions at issue here, the policy against scorn and political advertising, are not “unusual.” R. 038.

Mr. Calabrese reviews “a lot of ads” in his position, but few have “jump[ed] out to [him] as a problem.” R. 033, 036. He rejected four advertisements in fourteen years for not complying with RTA policy. Two of the proposed advertisements supported political candidates, including one who was a personal acquaintance of Calabrese. R. 032. Mr. Calabrese could not recall why the other two advertisements were rejected but they were not for violations of the policy against scorn. R. 032–033. Mr. Calabrese mistakenly allowed an advertisement for bungee jumping at a national park, which is illegal under a federal regulation. R. 033.

Mr. Calabrese claims that he does not “just rubber stamp all of the ads” but scrutinizes them for noncompliance. R. 036. For example, when LeBron James left the Cleveland professional basketball team for the first time, an advertisement was proposed that “might have been scornful.” R. 036–037. Calabrese consulted with “some members of the Board of Trustees” to decide that the advertisement did not violate RTA policy. R. 035. In another circumstance, Mr. Calabrese fact-checked a claim about a roller coaster. R. 036.

B. Plaintiff-Appellee’s Proposed Application and Denial

Plaintiff-Appellee Katherine Fisher is a seventeen-year-old environmental advocate who applied to purchase an advertisement on RTA vehicles on June 15, 2022. R. 016, 019, 020. She considered RTA vehicles an ideal medium to spread her message outside of her existing school-based influence. R. 020. Fisher believes recycling is a pressing and important issue in Cuyahoga County, so her proposed advertisement read, “People who don’t recycle are TRASH. By not doing your part you are stealing the future from your children and grandchildren. *for a greener tomorrow, support the only true pro-environment candidate: Yuna Bang for mayor*.” R. 039. Her message intentionally

included “strong wording” that was “not meant to make someone feel good” but rather evoke frustration or anger. R. 022. The strong language was “the point.” *Id.* The advertisement’s endorsement of mayoral candidate Yuna Bang for Mayor “felt like an important opportunity to affect change.” *Id.*

Ms. Fisher’s application was rejected on June 29, 2022, and her subsequent appeal for reconsideration was denied on July 14, 2022. R. 040–041. Calabrese said this decision “was pretty easy.” The policy “obvious[ly]” violated the prohibition on supporting a political candidate, R. 038, and “[t]he proposed ad called people quote unquote “trash.”... Just imagine if someone on the bus called another rider trash to their face,” so violated the scornfulness policy. *Id.*

C. Procedural History

Ms. Fisher brought this case on August 8, 2022, alleging RTA and Mr. Calabrese violated her First Amendment rights by denying her application and that RTA’s policy is facially unconstitutional under the First Amendment. R. 008. She then filed a motion for preliminary injunction the following day. R. 010–011.

The district court granted relief to Ms. Fisher, ordering that the challenged advertisement be displayed. Fisher v. Greater Cleveland Regional Transit Authority (RTA), No. 22-cv-16123 (N.D. Ohio Oct. 12, 2022); R. 043–045. The court reasoned that RTA operated a public forum because it permitted political speech and inconsistently enforced its advertising policy. R. 044. RTA’s policy was subjected to strict scrutiny, which RTA conceded that it could not meet. The court ruled in Ms. Fisher’s favor, and RTA filed this timely appeal. R. 045.

II. Discussion

A. Standard of Review

This Court ordinarily reviews a district court’s order granting a preliminary injunction for abuse of discretion, but when the First Amendment is implicated, *de novo* review is appropriate. Bays v. City of Fairborn, 668 F.3d 814, 819 (6th Cir. 2012). In

deciding motions for preliminary injunction, district courts weigh four factors: “(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury absent the injunction; (3) whether the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of an injunction.” Bays v. City of Fairborn, 668 F.3d 814, 818–19 (6th Cir. 2012). In the First Amendment context, the movant’s likelihood of success on the merits predominates over the others, so this Court conducts *de novo* review. City of Fairborn, 668 F.3d at 819. See Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp., 511 F.3d 535, 541 (6th Cir. 2007).

When determining whether a government entity’s restriction on public speech violates the First Amendment, we first determine the type of “forum” at issue. Minn. Voters All. v. Mansky, 138 S. Ct. 1876, 1885 (2018). The Supreme Court recognized two types of fora at issue here: “designated public forums” and “non-public forums.” Designated public forums have “not traditionally been regarded as a public forum” but which the government has “intentionally opened up for that purpose.” Id. Governments may impose reasonable time, place, and manner restrictions on private speech in designated public forums, but content restrictions must satisfy strict scrutiny. Id. Non-public forums are not by tradition or designation a forum for public communication and the government retains the power to preserve the property for its dedicated purpose. Id. Restrictions to speech in non-public forums must be reasonable considering the forum’s purpose and may not “suppress expression merely because public officials oppose the speaker’s view.” Id.

B. RTA Operates a Nonpublic Forum

[Court concludes that RTA operates a nonpublic forum.]

C. RTA’s Restrictions and the First Amendment

Governments may restrict the content appearing in nonpublic forums, but those restrictions cannot discriminate based on the viewpoint expressed and must be reasonable given the forum’s purpose. Am. Freedom Def. Initiative (AFDI) v. Suburban Mobility

Auth. for Reg. Transp. (SMART), 978 F.3d 481, 493 (6th Cir. 2020); Minn. Voters All. v. Mansky, 138 S. Ct. 1876, 1885 (2018). RTA’s ban on political candidate advertising is reasonable but its policy against scornful advertisements is not viewpoint neutral and violates the First Amendment.

1. Restriction on Speech For or Against Political Candidates is Reasonable.

RTA rejected Ms. Fisher’s advertisement for violating the agency’s policy against political candidate advertising. Unlike the policies in prior cases, this policy is clear and objective, indicating that it is reasonable under the law.

When a government restricts speech in a nonpublic forum, content limitations must be reasonable given the purpose of the forum. Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788, 806 (1985). Reasonableness does not require the government to impose the least restrictive means to achieve a forum’s purpose, nor must such purpose be compelling. Id. at 808. Rather, the restriction must only have a permissible reason and provide a “sensible basis for distinguishing what may come in and what must stay out.” Mansky, 138 S. Ct. at 1888.

In Lehman v. City of Shaker Heights, a political candidate unsuccessfully challenged a city’s ban on political advertisements on city buses. 418 U.S. 298, 299 (1974). The plaintiff wished to promote his candidacy for Ohio State Representative with advertisements on car cards. Id. at 299. The Supreme Court found, first, that the city operated a nonpublic forum, id. at 303, then ruled that the City had permissible reasons for imposing these content restrictions: short-term candidacy advertisements could jeopardize long-term commercial advertising, political advertisements could create doubts about favoritism, and riders “would be subjected to the blare of political propaganda.” Id. at 304. The First Amendment, the Court held, does not require every publicly owned space to be open to every pamphleteer and politician. Id.

More recently in Minn. Voters All. v. Mansky, a political organization successfully challenged a prohibition on wearing political logos at polling locations

because the policy could not be applied reasonably. Mansky, 138 S. Ct. at 1892. The Court held that the polling locations were nonpublic forums, and Minnesota had a permissible purpose of creating an “island of calm” where citizens could peacefully vote. Id. at 1886–87. But the Court found that the state’s definition of “political” was not capable of reasoned application. Id. at 1888–92. Minnesota’s ban on materials that could be perceived as political issues carried with it inherent ambiguity. For example, a t-shirt reading “Support Our Troops” or “#MeToo” could be banned. Id. at 1889–92. The term “political” was “unmoored” and prone to “haphazard interpretation” rather than expressing an objective and workable standard. Id. at 1888. Despite these serious faults, the Court accepted that the insignia of political parties and candidates was “clear enough” to be reasonably restricted. Id. at 1889.

This Court followed this rationale two years later in Am. Freedom Def. Initiative (AFDI) v. Suburban Mobility Auth. for Reg. Transp. (SMART), where a civic organization challenged a transit agency’s advertising policy against “political or political campaign advertising.” AFDI, 978 F.3d at 486. With its policy, the transit agency sought “to minimize chances of abuse, the appearance of favoritism, and the risk of imposing upon a captive audience.” The panel held the policy was unreasonable because the agency failed to adopt a “discernible approach” to determine what was allowed and disallowed. Id. at 494.

There, the Court reasoned that the term “political” was too ambiguous for reasonable application. In comparing “political” with “political campaign,” it ruled that the latter lacked an “expansive reach” and could easily be identified by an objective person. Id. at 494, 498. Although someone could determine what is sufficiently “political” to warrant having their advertisement denied, “the subjective enforcement of an indeterminate prohibition increases the opportunity for abuse in its application.” Id. at 497. In overruling the transit agency’s policy against “political” advertising, the court concluded that the restriction on “political candidate” advertising suffered no such defect. Id. at 498.

Here, the challenged policy lacks the deficiencies of the Mansky and AFDI policies. RTA's policy against advertisements for or against political candidates had a permissible purpose, see Lehman, 418 U.S. at 303, and the policy is clear regarding which content is permissible and which is prohibited. AFDI, 978 F.3d at 498.

RTA had a permissible purpose when it banned advertisements by political candidates. Like Lehman, RTA sought to provide revenue, while assuring riders with a safe and pleasant experience. See Lehman, 418 U.S. at 304 (finding that short-term candidacy advertisements could jeopardize long-term commercial advertising and impose on captive riders). Ensuring that customers continue to use RTA services is central to the financial health of the transit system, and preventing these impositions advances that permissible purpose. R. 042, 037. This policy does not fit perfectly with its purpose. Political advertising permitted under RTA's policy could cause riders discomfort or jeopardize long-term commercial advertising. But the First Amendment does not obligate RTA to narrowly tailor its policy in this manner when it operates a nonpublic forum.

RTA's prohibition on advertising that advocates for or against a political candidate is clear and objective. The Mansky and AFDI courts both addressed policies that banned all "political" speech, not only speech involving candidates for office. Mansky, 138 S. Ct. at 1889; AFDI, 978 F.3d at 497. Those policies gave administrators discretion to decide whether an advertisement with overtones of public issues was actually "political" and therefore in violation of the policy. AFDI, 978 F.3d at 497. Both cases implied that prohibiting political candidate advertising was sufficiently clear. Mansky, 138 S. Ct. at 1889; AFDI, 978 F.3d at 498. That is precisely what RTA has done.

Ms. Fisher's proposed ad clearly violates RTA's policy. Her advertisement endorses "the only true pro-environment candidate: Yuna Bang for mayor," befitting of the "blare of political propaganda" that RTA sought to avoid. See Lehman, 418 U.S. at 304. RTA objectively determined that the ad violated its reasonable policy to protect the purpose of its forum.

RTA's prohibition on political candidate advertising is facially constitutional and, as applied to this case, does not violate Ms. Fisher's First Amendment rights.

2. Restriction on Scornful Speech is Viewpoint Discriminatory.

RTA also rejected Ms. Fisher’s advertisement because it violated RTA’s policy against scornful advertisements. Recent decisions from the Supreme Court and this Court compel us to hold that this policy is not viewpoint neutral and violates the First Amendment.

Public entities may implement reasonable content restrictions in nonpublic forums but may not impose restrictions that discriminate on the perspective expressed. Mansky, 138 S. Ct. at 1885–86. For example, the government may ban political campaigning on a military base, but if it were to allow such speech, it could not provide access to only the Democratic or Republican Party. See Greer v. Spock, 424 U.S. 828, 831, 838–40 (1976); Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 829–30 (1995). Similarly, the government may not determine that speaking in favor of one issue or cause is acceptable but speaking against it is prohibited. AFDI, 978 F.3d at 500. When the government acts in this manner, “it suggests that the government seeks to accomplish” more than the forum’s assigned purpose, but instead seeks to suppress certain ideas. AFDI, 978 F.3d at 499 quoting R.A.V., 505 U.S. at 390.

Two recent Supreme Court decisions are pertinent to our analysis. In Matal v. Tam, 137 S. Ct. at 1751, an individual successfully challenged the denial of a trademark because the government’s policy was viewpoint discriminatory. The government denied a trademark for “The Slants,” an East Asian racial slur, because it violated the Lanham Act’s disparagement clause. The Supreme Court held the clause was facially unconstitutional because the clause required the government to favor one moral standard and disfavors another. Passing judgment on the adequacy of a moral standard is viewpoint discrimination and therefore, impermissible under the First Amendment. Id. at 1763. Two years later in Iancu v. Brunetti, 139 S. Ct. 2294, 2297–2298, 2301 (2019), the government denied a trademark because the brand name resembled a vulgarity. A unanimous Supreme Court held that the “immoral or scandalous matter” provision of the

Lanham Act disfavored certain ideas while favoring others, which like Matal, was viewpoint discrimination. Id. at 2301–2302, citing Matal, 137 S. Ct. at 1751.

This Court applied Iancu and Matal to a transit advertising case, holding that a policy prohibiting advertisements that are “likely to hold up to scorn or ridicule any person or group of persons” violated the First Amendment. AFDI, 978 F.3d at 486. The Court explained that the transit agency’s policy distinguished between two opposed sets of ideas: those promoting a group of people and those disparaging the group. Id. at 500. The transit agency prohibited an advertisement because it implied that Islam was a violent religion, but the agency conceded that an advertisement implying that Islam was a peaceful religion would be permissible. Id. The policy, if allowed, required a public official to decide in which contexts speech disparaged a person or group, and when an advertisement with a negative tone did not “hold up to scorn.” This Court found that viewpoint discrimination did not vary “depending on the context,” and accordingly, the policy could not stand. Id. at 501.

Here, the same logic applies. RTA’s prohibition on advertising that is “scornful of an individual or a group of individuals” discriminates based on the viewpoint expressed.

The scornfulness policy requires a context-dependent analysis and enables a public official to pick which ideas may appear in the forum. Instead of prohibiting an entire subject of discussion, the policy distinguishes between two ideas: those that ridicule or scorn a group and those that support the group. See id. at 498, 500. By favoring speech that is not scornful, RTA’s policy enacted the same error appearing in Matal, Iancu, and AFDI. See Matal, at 137 S. Ct. at 1763; Iancu 139 S. Ct. at 2301, AFDI, 978 F.3d at 486. A policy disfavoring scornful speech cannot be evenhandedly applied any more than a policy that prohibits disparaging or ridiculing a group of persons. See AFDI, 978 F.3d at 486, 501. These policies require public officials to make decisions depending on the context, indicating they are facially invalid under the First Amendment.

The unconstitutionality of RTA’s scornfulness policy becomes clear when applied to this case. Ms. Fisher’s proposed advertisement disparages people who do not recycle. The Supreme Court and our Circuit precedent dictate that this must be compared to an

advertisement that promotes people who do not recycle, rather than scorn them. See AFDI, 978 F.3d at 500 (comparing advertisements promoting church attendance to those ridiculing church attendees). If an advertisement praising people who do not recycle would be allowed, the policy unconstitutionally discriminates based on viewpoint. An advertisement that read, “Recycling is too expensive. Thank you for throwing your cans in the trash!” does not appear to violate any provision of RTA’s policy, R. 042, and would likely be allowed.

We could further compare Ms. Fisher’s advertisement that “People who don’t recycle are TRASH” to an advertisement that read, “Not Recycling is Bad.” The two advertisements share a perspective on recycling and have a negative tone, but the latter would be unlikely to violate RTA’s policies. R. 042. Even so, an official must determine whether this advertisement was sufficiently disparaging to warrant the condemnation given the context of transit advertising. See AFDI, 978 F.3d at 501. Our precedent seeks to avoid this type of line drawing since viewpoint discrimination cannot vary depending on the context. Id. The official’s discretionary decision would be impermissible under the First Amendment.

RTA’s policy against scornful advertisement impermissibly chooses which viewpoints are allowed in its forum and is facially unconstitutional under the First Amendment.

III. Conclusion

The Court concludes that RTA permissibly rejected Ms. Fisher’s proposed advertisement. Fisher cannot show she was harmed by the impermissible grounds for denial as the policies are separate and independently sufficient. See Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 285–86 (1977) (upholding a government action when there is a constitutional justification, even if the government considered an unconstitutional factor that supported the action). We, therefore, REVERSE the district court’s order granting a preliminary injunction and REMAND with instructions that the Plaintiff’s complaint be dismissed.

Applicant Details

First Name **Robert**
 Middle Initial **B.**
 Last Name **Watson**
 Citizenship Status **U. S. Citizen**
 Email Address blakewatson30@gmail.com

Address
 Address
 Street
2311 Tuckaho Rd.
 City
Louisville
 State/Territory
Kentucky
 Zip
40207
 Country
United States

Contact Phone Number
502-243-7950

Applicant Education

BA/BS From **University of California-Los Angeles**
 Date of BA/BS **June 2020**
 JD/LLB From **University of Pennsylvania Carey Law School**
<https://www.law.upenn.edu/careers/>
 Date of JD/LLB **May 15, 2023**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Journal of Law and Education (published)**
University of Pennsylvania Journal of Law and Change (senior editor)
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial Internships/
Externships **No**
Post-graduate
Judicial Law Clerk **Yes**

Specialized Work Experience

Recommenders

Mayeri, Serena
smayeri@law.upenn.edu
215-898-6728
Galbraith, Jean
jgalbraith@law.upenn.edu
215-746-7824
Selent, John
john.selent@dinsmore.com
Joki, Paige
pjoki@elc-pa.org
(215) 703-7920

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Robert B. Watson
2311 Tuckaho Rd.
Louisville, KY, 40207
rbwatson@pennlaw.upenn.edu
(502) 243-7950

March 24th, 2023
The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am writing to request your consideration of my application for your clerkship position beginning in the fall of 2024. I am currently a dual-degree third-year law and master's in education policy student at the University of Pennsylvania Carey Law School and will graduate this May.

I will be working as a litigation associate at Gibson, Dunn & Crutcher's Washington, D.C. office starting in the fall of this year. I have also already developed my legal research and writing skills through a variety of experiences at the ACLU of Northern California, Penn's Child Advocacy Clinic, the Education Law Center, and various law firms. As someone who is also openly-gay and who has a deep interest in continuing to do LGBTQ+ advocacy work during and following my time at Gibson Dunn, I would be thrilled to clerk for Virginia's first openly-gay federal judge. It would be an honor to be offered a clerkship position for your 2024-2025 term, and I would be fully committed to producing high-quality work for your chambers.

I have included my resume, transcripts, and writing sample in the following application. I have also included letters of recommendation from Professor Serena Mayeri (smayeri@law.upenn.edu), Professor Jean Galbraith (jgalbraith@law.upenn.edu), Paige Joki, Esq. (pjoki@elc-pa.org), and John Selent, Esq. (john.selent@dinsmore.com). You may also contact ACLU NorCal attorney Jennifer Chou (jchou@aclunc.org) for an additional reference.

Please let me know if absolutely any additional information would be useful, and thank you for your consideration of my application.

Respectfully,

Robert B. Watson

Robert Blake Watson

2311 Tuckaho Rd.
Louisville, KY, 40207
502.243.7950
rbwatson@pennlaw.upenn.edu

EDUCATION

University of Pennsylvania Carey Law School, Philadelphia, PA

J.D. Candidate, 2023

- Honors: Merit-Based Scholarship Recipient, [Published in Journal of Law and Education](#),
Morris Fellow, [U.S. Delegate to Waseda International Program](#) ([linked](#)), and
Research Assistant for Professor Serena Mayeri
- Activities: [Graduate Student Body President](#) (2022-2023)
Senior Editor, University of Pennsylvania Journal of Law and Social Change
Class Representative, Penn Law American Constitution Society
Social Chair, Lambda (LGBTQ+ Affinity Organization)

University of Pennsylvania Graduate School of Education, Philadelphia, PA

M.S.Ed Education Policy, Candidate 2023 (Merit-Based Scholarship Recipient)

University of California, Los Angeles (UCLA), Los Angeles, CA

BA, *magna cum laude*, Political Science, minor Education Studies, 2020

- Honors: Phi Beta Kappa, UCLA Honors Program, Dean's List
- Activities: *Student Body President* (2019-2020)
Published, UCLA and Columbia Undergraduate Law Reviews
Op-Eds and Featured: [LA Times](#), [Spectrum News](#), [TeenVogue](#) ([linked](#))

EXPERIENCE

ACLU of Northern California, San Francisco, CA

Fall 2022

Gender, Sexuality, and Reproductive Justice Legal Internship Program

Engaged in legal memoranda and brief drafting, legal research, and client intakes.

Gibson, Dunn & Crutcher LLP, Washington, D.C., & Los Angeles

Summer 2022

Diversity Scholars Program & Summer Associate

Split-summer diversity program in Gibson Dunn's D.C. and Los Angeles offices.

Education Law Center, Philadelphia, PA

Spring 2022

Internship Program

Led formal review and recommendations surrounding Philadelphia school district's Title IX policies, drafting and review of high-profile litigation motions, and managed client intakes and advocacy projects.

Dinsmore & Shohl LLP/Yum! Brands, Louisville, KY

Summer 2021

LCLD Diversity Scholar & Summer Associate

5 weeks working with Dinsmore, a national law firm, and 5 weeks with Yum! Brands' in-house counsel, gaining research and client-relationship experience in labor & employment, commercial litigation, insurance, and corporate matters.

LANGUAGES & INTERESTS

Intermediate fluency in Spanish, politics, writing,
state/national/international public forum debate champion.

Record of: Robert Blake Watson
 Penn ID: 59046530
 Date of Birth: 02-APR
 Date Issued: 28-FEB-2023

The University of Pennsylvania

U N O F F I C I A L

Page: 1

Level:Law

Primary Program

Program: Juris Doctor
 Division : Law
 Major : Law

Public Service/Pro Bono Requirement Satisfied

SUBJ NO.

COURSE TITLE

SH GRD

R

SUBJ NO.

COURSE TITLE

SH GRD

R Institution Information continued:

INSTITUTION CREDIT:

Fall 2021

Law

EDUC 559

Sociology of Education

3.00 A

EDUC 698

Politics of School Reform

3.00 A

LAW 659

Employment Discrimination

3.00 A

(Mayeri)

LAW 874

Jlasc Independent Research

1.00 CR

LAW 875

Seminar

LAW 875

Journal of Law and Social

0.00 CR

LAW 969

Change - Associate Editor

LAW 969

Discrimination in Education

3.00 A

LAW 999

(Davis)

LAW 999

Independent Study (Mayeri)

2.00 A

Ehrs: 15.00

Fall 2020

Law

LAW 500

Civil Procedure (Fisch) - Sec

4.00 B+

LAW 502

Contracts (Baker) - Sec 3

4.00 A-

LAW 504

Torts (Delisle) - Sec 3

4.00 B

LAW 510

Legal Practice Skills

4.00 CR

LAW 512

(Duncan) - Sec 3

LAW 512

Legal Practice Skills Cohort

0.00 CR

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

Spring 2021

Law

LAW 501

Constitutional Law

4.00 B+

LAW 503

(Roosevelt) - Sec 3/4

LAW 503

Criminal Law (Ossei-Owusu) -

4.00 B+

LAW 510

Sec 3

LAW 510

Legal Practice Skills

2.00 CR

LAW 512

(Duncan) - Sec 3

LAW 512

Legal Practice Skills Cohort

0.00 CR

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

LAW 512

(Givertz)

Spring 2022

Law

EDUC 545

University-School-Community

3.00 A

EDUC 545

Research Partnerships:Theory

LAW 555

& Practice (Edpl)

LAW 555

Professional Responsibility

2.00 B+

LAW 649

(Sandman)

LAW 649

Interdisciplinary Child

7.00 B

LAW 649

Advocacy Clinic

LAW 874

(Finck/Deluria/Kenney)

LAW 874

Jlasc Independent Research

1.00 CR

LAW 875

Seminar

LAW 875

Journal of Law and Social

1.00 CR

LAW 875

Change - Associate Editor

LAW 875

Change - Associate Editor

LAW 875

Change - Associate Editor

LAW 875

Change - Associate Editor

LAW 875

Change - Associate Editor

LAW 875

Change - Associate Editor

LAW 875

Change - Associate Editor

LAW 875

Change - Associate Editor

LAW 875

Change - Associate Editor

LAW 875

Change - Associate Editor

LAW 875

Change - Associate Editor

LAW 875

Change - Associate Editor

LAW 875

Change - Associate Editor

LAW 875

Change - Associate Editor

LAW 875

Change - Associate Editor

LAW 875

Change - Associate Editor

LAW 875

Change - Associate Editor

LAW 875

Change - Associate Editor

LAW 875

Change - Associate Editor

***** CONTINUED ON NEXT COLUMN *****

Ehrs: 14.00

Fall 2022

Law

CONTINUED ON PAGE 2 *****

Record of: Robert Blake Watson
Penn ID: 59046530
Date of Birth: 02-APR
Date Issued: 28-FEB-2023

UNOFFICIAL

Page: 2

The University of Pennsylvania

Level:Law

SUBJ NO.	COURSE TITLE	SH GRD	R
----------	--------------	--------	---

Institution Information continued:

LAW 8660	Ad- Hoc Externship (Wolff)	5.00 CR	
LAW 8750	Journal of Law & Social Change - Senior Editor	0.00 CR	
LAW 9540	Climate Change (Welton)	3.00 A	
Ehrs: 8.00			
Spring 2023			
LAW 8750	Journal of Law & Social Change - Senior Editor	1.00 IN PROGRESS	
LAW 9290	Law and Sexuality (Wolff)	3.00 IN PROGRESS	
In Progress Credits 4.00			
***** TRANSCRIPT TOTALS *****			
Earned Hrs			
TOTAL INSTITUTION	69.00		
TOTAL TRANSFER	0.00		
OVERALL	69.00		
***** Comments *****			
Senior Writing Requirement - fulfilled through Discrimination in Education (Davis);			
***** CONTINUED ON PAGE 3 *****			

Record of: Robert Blake Watson
 Penn ID: 59046530
 Date of Birth: 02-APR
 Date Issued: 28-FEB-2023

The University of Pennsylvania

U N O F F I C I A L

Page: 3

Level: Professional

Primary Program

Program: Master of Science in Education
 Division : Graduate School of Education
 Masters/Doctorate
 Major : Education Policy

Certificate in: Gender, Sexuality & Women's Studies

SUBJ NO.	COURSE TITLE	CU GRD	R
R Spring 2023			
LAW 6310	Evidence (Rudovsky)	1.33	IN PROGRESS
LAW 9260	Higher Education Law and Policy (Mian)	1.00	IN PROGRESS
		In Progress Credits	2.33
***** TRANSCRIPT TOTALS *****			
		Earned Hrs	GPA Hrs Points GPA
TOTAL INSTITUTION		7.33	7.33 28.62 3.90
TOTAL TRANSFER		0.00	
OVERALL		7.33	7.33 28.62 3.90
***** Comments *****			
In response to the COVID-19 pandemic, specific divisions within the University of Pennsylvania granted alternate grading options for academic terms that were impacted. See COVID-19 Alternate Grading Policies in the Archives of University Catalogs for details.			
***** END OF TRANSCRIPT *****			
***** CONTINUED ON NEXT COLUMN *****			

University of California, Los Angeles
UNDERGRADUATE Student Copy Transcript Report
Missing Valid Seal

For Personal Use Only

This is an **unofficial/student copy** of an academic transcript and therefore does not contain the university seal and Registrar's signature. Students who attempt to alter or tamper with this document will be subject to disciplinary action, including possible dismissal, and prosecution permissible by law.

For Personal Use Only
Unofficial/Student Copy
Missing Valid Seal

Student Information

Name: WATSON, ROBERT BLAKE
UCLA ID: 204832262
Date of Birth: 04/02/XXXX
Version: 08/2014 | SAITONE
Generation Date: December 29, 2020 | 12:10:57 AM
This output is generated only once per hour. Any data changes from this time will be reflected in 1 hour.

For Personal Use Only
Unofficial/Student Copy
Missing Valid Seal

Program of Study

Admit Date: 09/19/2016
COLLEGE OF LETTERS AND SCIENCE
Major:
POLITICAL SCIENCE
Minor:
EDUCATION STUDIES

For Personal Use Only
Unofficial/Student Copy
Missing Valid Seal

For Personal Use Only
Unofficial/Student Copy
Missing Valid Seal

Degrees | Certificates Awarded

BACHELOR OF ARTS Awarded June 12, 2020
in POLITICAL SCIENCE
With a Minor in EDUCATION STUDIES
Magna Cum Laude
With College Honors

For Personal Use Only
Unofficial/Student Copy
Missing Valid Seal

For Personal Use Only
Unofficial/Student Copy
Missing Valid Seal

Secondary School

DUPONT MANUAL HIGH SCHOOL, May 2016

For Personal Use Only
Unofficial/Student Copy
Missing Valid Seal

University Requirements

Entry Level Writing satisfied
American History & Institutions satisfied

For Personal Use Only
Unofficial/Student Copy
Missing Valid Seal

California Residence Status

Nonresident

For Personal Use Only
Unofficial/Student Copy
Missing Valid Seal

Student Copy / Personal Use Only | [204832262] [WATSON, ROBERT]

Transfer Credit

Institution

ADVANCED PLACEMENT

CAMPBELLSVILLE UNIVERSITY

1 Term to 10/2016 Psd 68.0

1 Term to 10/2016 9.0

Fall Quarter 2016

Major:

PREPOLITICAL SCIENCE

CHICANO HIST&CULTUR

CHICANO 10A

5.0

20.0

A+

DIFF&INTGL CALCULUS

MATH 31A

4.0

12.0

B

INTR-POLITCL THEORY

POL SCI 10

5.0

18.5

A-

POLITICS & STRATEGY

POL SCI 30

5.0

13.5

B-

Term Total Atm 19.0 Psd 19.0 Pts 64.0 GPA 3.368

Winter Quarter 2017

ENGL COMP-RHET&LANG

ENGCOMP 3

5.0

20.0

A

INTRNTL REL-MIDEAST

POL SCI 132A

4.0

16.0

A+

RACE&GNDR&EDU INEQL

POL SCI 186

4.0

16.0

A+

HONORS CONTRACTS

POL SCI 189HC

1.0

4.0

A

Honors Content

Dean's Honors List

Term Total Atm 14.0 Psd 14.0 Pts 56.0 GPA 4.000

Spring Quarter 2017

INTRNTL REL-MIDEAST

HNRS M157

4.0

14.8

A-

Honors Content

INTEGRN&INF SERIES

MATH 31B

4.0

13.2

B+

WORLD POLITICS

POL SCI 20

5.0

20.0

A

Term Total Atm 13.0 Psd 13.0 Pts 48.0 GPA 3.692

Student Copy / Personal Use Only | [204832262] [WATSON, ROBERT]

Fall Quarter 2017

PRIN OF ECONOMICS	ECON 1	4.0	13.2	B+
COMM&CORPRAT INTERN	POL SCI 195CE	4.0	16.0	A
INTRO-AMERICN PLTCS	POL SCI 40	5.0	20.0	A+
Dean's Honors List				
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>
	Term Total	13.0	13.0	49.2
				<u>GPA</u>
				3.785

Winter Quarter 2018

INTRO TO BUDDHISM	ASIAN M60W	5.0	20.0	A
Writing Intensive				
ECOL&ENVIRN PROBLMS	HNRS 41	5.0	20.0	A
Honors Content				
GEN ENGR-MED&AG&LAW	HNRS 70A	5.0	20.0	A
Honors Content				
Dean's Honors List				
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>
	Term Total	15.0	15.0	60.0
				<u>GPA</u>
				4.000

Spring Quarter 2018

ART&TECH-FILMMAKING	FILM TV 4	5.0	20.0	A
WESTERN CIVILIZATN	HIST 1C	5.0	20.0	A
ISRL-CONFLICT OF ID	POL SCI 191D	4.0	16.0	A
Dean's Honors List				
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>
	Term Total	14.0	14.0	56.0
				<u>GPA</u>
				4.000

Fall Quarter 2018

<u>Major:</u>				
POLITICAL SCIENCE				
PEOPLE&EARTH ECOSYS	GEOG 5	5.0	20.0	A
PAST PEOPLE&FUTR	HNRS M152	5.0	20.0	A+
Honors Content				
INTRO-STAT REASON	STATS 10	5.0	20.0	A
Dean's Honors List				
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>
	Term Total	15.0	15.0	60.0
				<u>GPA</u>
				4.000

Student Copy / Personal Use Only | [204832262] [WATSON, ROBERT]

Winter Quarter 2019

LGBT ISSUES-ED&LAW	EDUC 147	4.0	16.0	A
PUB OPIN&VTNG BEHAV	POL SCI 141B	4.0	14.8	A-
DISCRS BEFR DEMCRCY	POL SCI 163A	4.0	16.0	A
Dean's Honors List				
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u> <u>GPA</u>
	Term Total	12.0	12.0	46.8 3.900

Spring Quarter 2019

POLICY ANLYS&POLTCS	EDUC 162	5.0	20.0	A+
CURRENT ISSUES-EDUC	EDUC 191A	4.0	16.0	A
CLNLISM&DCRS&DMCRCY	POL SCI 163B	4.0	16.0	A
Dean's Honors List				
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u> <u>GPA</u>
	Term Total	13.0	13.0	52.0 4.000

Fall Quarter 2019

EDUCATION AND LAW	EDUC 129	5.0	20.0	A
GLBLZTN & LEARNING	EDUC 152A	4.0	16.0	A
MEX-AM&THE SCHOOLS	EDUC M102	4.0	16.0	A
Dean's Honors List				
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u> <u>GPA</u>
	Term Total	13.0	13.0	52.0 4.000

Winter Quarter 2020

EDUC EQLTY&FUTR SOC	EDUC 11	5.0	20.0	A
CREATING ROADMAP Honors Content	HNRS 50	5.0	20.0	A
INSTITUTNL DEVLPMNT	POL SCI 147C	4.0	16.0	A
Dean's Honors List				
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u> <u>GPA</u>
	Term Total	14.0	14.0	56.0 4.000

Student Copy / Personal Use Only | [204832262] [WATSON, ROBERT]

Spring Quarter 2020

RACE&CLASS&INEQUAL	EDUC 130	5.0	20.0	A
DIRECTED RESEARCH	EDUC 199	4.0	16.0	A
THE PRESIDENCY	POL SCI 140B	4.0	16.0	A
INTERMEDIATE SPAN	SPAN 4	4.0	14.8	A-

Due to the COVID-19 pandemic, Passed/
Not Passed grading permitted for many
classes and degree requirements.

Dean's Honors List

	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total	17.0	17.0	66.8	3.929

UNDERGRADUATE Totals

	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Pass/No Pass Total	0.0	0.0	N/a	N/a
Graded Total	172.0	172.0	N/a	N/a
Cumulative Total	172.0	172.0	666.8	3.877

Total Non-UC Transfer Credit Accepted	77.0
Total Completed Units	249.0

END OF RECORD
NO ENTRIES BELOW THIS LINE

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

March 24, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Applicant Robert Watson

Dear Judge Walker:

It is with great pleasure and enthusiasm that I write to recommend Robert Blake Watson for a clerkship in your chambers. Mr. Watson's intellect, interpersonal acuity, leadership, and dedication promise to make him an excellent law clerk.

Mr. Watson, who grew up and attended public schools in Louisville, Kentucky, graduated magna cum laude and Phi Beta Kappa from UCLA's Honors Program, where he served as Student Body President and took a leadership role in the university's response to the pandemic, earning an award from the Chancellor for his service. A political science major, Mr. Watson came to law school to pursue his passion for ensuring equal opportunity in education. He received merit-based scholarships both to the law school and to obtain a master's degree in education policy at Penn's Graduate School of Education.

I first met Mr. Watson when he enrolled in my (remote) elective course on Gender and the Law in the spring of his first year of law school. Mr. Watson stood out in a talented group of students for his insightful contributions to class discussions and his probing questions after class. My practice while teaching virtually was to stay in the "classroom" after class speaking with any students who wanted to stay, and Robert and I had many conversations on Zoom that semester. His enthusiasm for learning and for absorbing new perspectives was contagious, and his ability to assimilate and articulate ideas impressed me tremendously.

The materials we studied encompassed caselaw and academic literature in a variety of areas, including anti-discrimination law, reproductive health, employment, education, violence, legal education, and family law. Grades in the course were based primarily on an 8-hour take-home essay exam that tested students' understanding of both doctrine and interdisciplinary scholarship. Mr. Watson wrote an excellent exam that reflected his mastery of the material and easily earned one of a small handful of As in the course.

I was delighted when Mr. Watson decided to enroll in my Employment Discrimination course in the Fall of 2021, held in person. Again, he was a valued contributor to class discussions, including small group exercises, where his professionalism, collegiality, and leadership skills were frequently on display. Grades in the course were based primarily on an 8-hour takeaway exam. The first part of the exam consisted of two issue-spotter questions that required students to identify potential legal claims, apply the law to an intricate fact pattern, and make compliance recommendations to a hypothetical employer or strategize on behalf of a potential plaintiff. The second part was a more open-ended essay question that asked students to make descriptive and normative judgments about the field of employment discrimination law. Mr. Watson's were well-written, thoughtful, and evidenced his command of both doctrinal details and broader policy conundrums. Again, he earned a solid A in the course, with the highest raw exam score in the class.

I also had the opportunity to work closely with Mr. Watson on an independent study research paper he wrote during his 2L year, exploring the implications of the Supreme Court's recent decision in *Bostock v. Clayton County* for the lawfulness of single-sex education programs. Mr. Watson was especially interested in thinking about how single-sex schooling might affect LGBTQ+ students, and from the outset he planned to write an article for publication. By the end of the academic year, he succeeded in producing an article that was accepted by and published in the *Journal of Legal Education*, a rare accomplishment for a law student. Our many conversations through several revisions left me impressed with Mr. Watson's commitment to producing high-quality work and his responsiveness to constructive feedback on his writing. I had already caught a glimpse of Mr. Watson's strong research skills when he assisted me with my own research on *in loco parentis* doctrines in family law and on the legal treatment of nonmarital sexual conduct by public schoolteachers over the summer before his 2L year. Robert asked all the right questions to ensure that the sources he gathered were as helpful as possible to my project.

I was able to observe Mr. Watson's work with a team of fellow students when he participated in the (remote) 2021 Transnational Program at Waseda University Law School in Tokyo. The program, held daily on Zoom during spring break, involved five intense days of meetings, lectures, and presentations on the subject of marriage equality. Faculty and students from law schools in Japan, South Korea, Taiwan, Germany, and the U.S. gathered to undertake a sustained comparative legal study. Mr. Watson and his teammates worked beautifully with one another and with their international counterparts to produce an excellent presentation on the final day of the program.

Others who have had the opportunity to observe Mr. Watson in the classroom have similarly been struck by his character as well as his aptitude as an advocate. Professor Tom Baker, who taught Robert Contracts in the Fall of 2020, writes: "Robert was one of the most thoughtful students in the class. His questions and reflections demonstrated genuine curiosity and engagement with the material, with a focus on the reasons for and the social consequences of the contract law doctrine we were studying. In

Serena Mayeri - smayeri@law.upenn.edu - 215-898-6728

addition to all the good things this suggests about his character, it also suggests that he will be a formidable advocate.” His first-year Legal Practice Skills instructor, Matthew Duncan, confirms Robert’s interpersonal and advocacy skills. Professor Duncan wrote to me that Robert is “a clear thinker, solid writer, outstanding oral communicator (and courtroom advocate), and terrific team player. His interpersonal skills stand out. Robert is unfailingly friendly, modest, and respectful of others, and thus thrives in all environments where people skills matter.”

Mr. Watson has gained valuable and diverse legal experience during law school. He spent the summer after his 1L year in his hometown of Louisville, at a law firm and with in-house counsel, working on matters involving labor and employment, insurance, and corporate law, including litigation. Prior to law school, he served as an intern at another Louisville law firm specializing in class action tort litigation. He completed a term-time externship at the ACLU of Northern California and spent his 2L summer at Gibson Dunn, where he will return after graduation.

In addition to compiling an impressive academic record, Mr. Watson has continued to take on leadership roles within the law school and the broader university community. He has served as Lambda’s social chair, as an editor for the Journal of Law and Social Change, as a Morris Fellow (mentor to 1L students), and was elected President of the Graduate Student Assembly for 2022-23.

Robert wears his accomplishments lightly. He is warm, thoughtful, kind, and an absolute pleasure to be around. He is self-confident but humble, dedicated but open-minded, and has a knack for putting others at ease. I anticipate that he will have a distinguished and impactful career serving the public interest, whether as a litigator, a public servant, or both. I have no doubt that he will be a superb addition to any judge’s chambers. In short, Robert Blake Watson’s application for a judicial clerkship has my strong and enthusiastic endorsement.

Thank you very much for your consideration. If I can provide any further information or assistance, please do not hesitate to contact me.

Sincerely,

Serena Mayeri
Professor of Law and History
Tel.: (215) 898-6728
E-mail: smayeri@law.upenn.edu

Serena Mayeri - smayeri@law.upenn.edu - 215-898-6728

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

March 24, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Applicant Robert Watson

Dear Judge Walker:

Robert Blake Watson is applying for a clerkship in your chambers. Robert was a strong student in my Federal Courts class. He is smart, warm, and engaging. I recommend him to you with enthusiasm.

I taught Robert in Federal Courts in the fall of 2022. I had a relatively small group of students – 36 – which enabled me to call on them frequently. Robert was an excellent student in class. When I called on him, he was well prepared, had a clear grasp of the doctrine, and had the gift of being able to see both sides of an argument. He did not volunteer comments too often, but when he did they were on point and good value. He wrote a smart, careful exam and earned an “A-” for the course. His exam showed good writing, clear thinking, and strong preparation. He did a particularly good job in working his way through a knotty habeas problem.

Robert's performance in Federal Courts was all the more impressive because he missed the last two weeks of the semester due to a family health crisis. His grandmother became seriously ill, and he went home to Louisville, Kentucky, to be her caregiver. Throughout this time, he showed strong professionalism in communicating with me and in continuing to study Federal Courts while dealing with a challenging family situation. He watched the course recordings and regularly attended my virtual office hours.

In my conversations with Robert outside of class, I have been impressed by his energy, intellectual curiosity, and good cheer. He has one of the most robust set of extracurricular activities that I have seen in a law school student. Within the law school, he serves on the Journal of Law and Social Change, on the American Constitutional Society, and on the Lambda affinity group. But as a dual degree student (in Educational Policy), his extracurricular interests range even more broadly, and he is presently the President of the Graduate Student Body for the entire University of Pennsylvania. This is basically a full-time job in itself; he has served on numerous University committees and does an enormous amount to advocate for graduate students. Somehow, he also manages to find time to keep up his love for the outdoors – he is a committed biker and has done a lot of hiking on the Appalachian Trail and the Pacific Crest Trail.

In short, I recommend Robert to you as a law clerk. He is smart, hardworking, and thoughtful. And he would be a delightful person to have around chambers: kind, a great conversationalist, and a team player. I would be delighted to talk more about Robert if you have questions. I can be reached by phone at (215) 746-7824 and my email is jgalbraith@law.upenn.edu.

Sincerely,

Jean Galbraith Professor of Law
jgalbraith@law.upenn.edu
215-746-7824

Jean Galbraith - jgalbraith@law.upenn.edu - 215-746-7824



John E. Selent
(502) 540-2315 (direct) ^ (502) 585-2207 (fax)
john.selent@dinsmore.com

February 25, 2023

Re: Robert Blake Watson

To Whom It May Concern:

I write to enthusiastically recommend Robert for a judicial clerkship in your chambers. I have come to know Robert both personally and professionally as a summer associate in the Dinsmore Louisville office. Personally, Robert is a delight to be around; he is articulate, witty, and charming. Robert is also academically brilliant. He graduated *magna cum laude* from the University of California, Los Angeles (UCLA), and is successfully pursuing dual degrees at one of the finest law schools in the nation at the University of Pennsylvania.

In addition to being a standout scholar, Robert is a leader. At both his undergraduate and graduate schools he was elected president of the undergraduate student body and the graduate student body, respectively. Robert is also a member of the LGBTQ community. Robert has been a leader in his community's efforts to achieve social, legal, and economic equality, but also maintains deep respect and understanding for those with differing political and legal philosophies. I have come to deeply admire Robert for his ability to develop significant professional relationships with those from diverse personal, political, and legal backgrounds.

I know Robert to be discreet, trustworthy, and committed to excellence in legal scholarship. Robert will be utterly discreet in his work with you and assist you to deliver excellence as you discharge your judicial responsibilities. I asked two of my partners at Dinsmore who also worked closely with Robert to comment upon his work for them in the course of representing clients.

Specifically, Sarah M. McKenna commented as follows:

Robert was an exceptional summer associate. I was particularly impressed with the work he performed related to a complex environmental law claim filed against one of our clients in Rhode Island. At the outset, I was impressed with Robert's initiative in researching the proper response, having had no prior experience with either the applicable statute or the applicable state law. I was equally impressed with his prudence to ask the appropriate questions at the outset to ensure proper work product, which when received exceeded expectations for his level of

experience. Robert also demonstrated the ability to see the larger litigation strategy rather than being solely focused on the task at hand. For example, he frequently completed a task and then recommended next steps to be taken and offered to assist showing great initiative. During a call with local counsel that I asked him to attend only to listen in to obtain experience, he took it on himself to take notes and then circulate them to our team afterward. When sending the notes, he asked if he could take on some of the tasks that were discussed, without my having to reach out to him or assign them. Throughout my time working with Robert, his work product and work ethic exceeded all expectations. He was always thorough, excellent at research and writing, showed genuine curiosity, and was able to work independently without having to be directed.”

And Joseph N. Tucker commented as follows:

Robert was a pleasure to work with and displayed a keen intellect. In the early summer of 2021, pre-*Ramirez*, Robert researched and wrote an outstanding memo on Article III standing comparing and contrasting the competing viewpoints and case law from the Ninth and Sixth Circuit Courts of Appeals for two different consumer class actions. Robert quickly understood the issues and evaluated the concept of whether an alleged procedural violation of two different consumer protection statutes can, by itself, manifest a “concrete injury” sufficient to confer Article III standing within the two circuits.

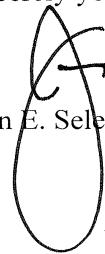
Robert’s enthusiasm for this topic, which was new to him, was refreshing. I was pleased by his intellectual curiosity in an area of the law that, for most students and many lawyers, is challenging and very dry. Nevertheless, Robert handled the project very well and engaged in several conversations with me about the issues and how we thought the Supreme Court might rule on this issue. Robert’s commitment to understanding a complex and nuanced area of the law showed me what a legal talent Robert could become, because he truly seems to enjoy research, writing, and evaluating complex legal issues. I would hire Robert immediately if he were to return to his hometown of Louisville (which I hope he does) following clerkship and firm opportunities, but in the meantime, I wholeheartedly recommend Robert for a judicial clerkship.

In conclusion, I enthusiastically recommend Robert to you as a judicial clerk; he will serve you extraordinarily well and will be an absolute pleasure to have in your chambers.

If you have any questions at all, please do call me or either of my partners quoted above. Sarah McKenna can be called at (502) 581-8031, and Joe Tucker can be called at (502) 540-2360.

Sincerely yours,

John E. Selent

A handwritten signature in black ink, appearing to be 'John E. Selent', written over a large, vertically oriented oval shape.



PHILADELPHIA
1800 JFK Blvd., Suite 1900A
Philadelphia, PA 19103
T 215-238-6970
F 215-772-3125

PITTSBURGH
429 Fourth Ave., Suite 702
Pittsburgh, PA 15219
T 412-258-2120
F 412-535-8225

Dear Honorable Judge,

It is my great pleasure to write this letter of recommendation for Robert Watson for employment as a Judicial Clerk.

I had the opportunity to work with Robert on several important projects over the past semester in his capacity as a legal intern with the Education Law Center-PA (ELC), a non-profit legal advocacy organization that seeks to ensure a quality public education for all children in Pennsylvania. As one of the staff attorneys at ELC who was supervising his work on specific projects, I have experienced firsthand Robert's devotion to understanding the intricacies of the law to solve barriers students are facing through existing and emerging case law, his detail-oriented work style, and his proactive efforts to seek feedback. I have been consistently impressed with Robert's devotion to his work and his initiative to seek out complex assignments that required him to gain knowledge in areas of the law of which he was not already familiar. It is my impression that Robert would excel as a law clerk.

There are two projects that Robert worked on that stand out. Robert served as a vital resource in reviewing and revising a Pennsylvania school district's policies and procedures relating to harassment on the basis of protected class status and Title IX. His thoughtful document review of these policies and detailed recommendations based on the evolving Title IX jurisprudence were crucial resources in meetings with the school district. The district has taken several of Robert's solutions under advisement as they work to finalize the revised guidance. Robert also took part in similar legal review and recommendation assignments relating to the mechanisms by which students report instances of harassment and bullying in schools using an online complaint form, and I was equally impressed with his work in that context as well. Robert's suggestions would make the platform better comply with an array of legal mandates that protect students' rights, should the district implement them.

Additionally, my colleague and Senior Attorney, Margie Wakelin had this to say about Robert's litigation work:

Robert also greatly contributed to ELC's litigation efforts on two high-profile cases. In one such case, Robert led ELC's efforts in reviewing and editing ELC's motion citations. Robert demonstrated his notable attention to detail, and even went so far as to provide valuable feedback regarding above-the-line text as well. Along with leading our document review efforts as part of an extensive discovery request, Robert conducted extremely valuable research on jurisprudence for motions relating to the admissibility of witness

Ensuring that all of Pennsylvania's children have equal access to a quality public education.

testimony. In all of Robert's work, my colleagues and I were consistently impressed with his thoroughness and clear legal writing.

Finally, Robert demonstrates leadership qualities, and is a courteous and responsive colleague. He is able to work both independently and be a collaborative team player. If given the opportunity to serve as a judicial clerk, I am certain that Robert will be equally devoted and passionate and take every effort to produce high quality work.

I give a resounding recommendation to Robert. I am confident he will serve as an excellent law clerk for any judge that receives his application.

If I can provide additional information about my experience working with Robert, please let me know.

Respectfully,



Paige Joki, Esq.

Staff Attorney

(Pronouns: she/her)

Education Law Center | 1800 JFK Boulevard, Suite 1900 A, Philadelphia, PA 19103
(215) 703-7920 (direct and fax) | pjoki@elc-pa.org

Article III Standing Memorandum

MemorandumTo:¹

From: Robert Blake Watson

Re.: Sixth Circuit Article III Standing Memorandum (2021)²

Issue Presented

This paper addresses whether REDACTED (hereinafter “Plaintiff”) has Article III standing to sue against REDACTED (hereinafter “Clients”) under the Fair Debt Collection Practices Act (hereinafter “FDCPA”) when Plaintiff was sent debt collection letters after she had knowingly paid her debts in full. This paper briefly surveys standing jurisprudence in the Sixth Circuit Court of Appeals and discusses whether Clients have feasible arguments against standing in the lawsuit brought by Plaintiff.

Short Answer

Plaintiff likely has sufficient standing to sue. Although there are arguments that challenge the three elements pointing in favor of Article III standing, these arguments are weak in light of Sixth Circuit precedent. *See generally Buchholz v. Meyer Njus Tanick*, 946 F.3d 855 (6th Cir. 2020).

BACKGROUND FACTS

Plaintiff brings an action against Clients in the United States District Court for the REDACTED, claiming violations of the Fair Debt Collection Practices Act (FDCPA) stemming from debt collection letters sent by Clients to Plaintiff after her debt had been settled. *See* Compl. § 1. The FDCPA was promulgated to respond to “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors” by ensuring that abusive debt collection practices are eliminated and that “those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.” *Id.* at § 1-2. Plaintiff demands actual

¹ Names of parties and legal counsel are excluded from this document.

² Please note that there have been developments in standing jurisprudence since the completion of this paper.

Article III Standing Memorandum

damages, statutory damages, attorney fees and costs, declaratory relief, and any such other relief deemed just and proper by the Court. *Id.* at § 9.

LEGAL STANDARD

Overview of Article III Standing in Sixth Circuit

Article III standing precedent dictates that Plaintiff must have (1) suffered an injury-in-fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

I. Injury-in-fact

For the first prong, Plaintiff must show that she suffered an injury-in-fact. Injury-in-fact must consist of both concreteness and particularization. *Id.* To satisfy the concreteness requirement, “both history and the judgment of Congress play important roles.” *Id.* at 1549. Additionally, the injury-in-fact must be “actual or imminent, not conjectural or hypothetical[.]” *See Lujan v. Defs of Wildlife*, 504 U.S. 555, 560 (1992).

II. Traceability

For the second prong, Plaintiff must show that the injury-in-fact is directly traceable to Clients’ alleged conduct. While statutory violations alone typically do not automatically become traceable to an injury, Congress may “define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before.” *Id.* at 580 (Kennedy, J., concurring in part and concurring in the judgment). Even so, separation-of-powers principles “prevent Congress from expanding the scope of judicial power beyond what Article III permits.” *See Buchholz*, 946 F.3d at 865.

III. Redressability

For the third prong, Plaintiff must show that the injury-in-fact is likely to be redressed by a favorable judicial decision. This prong is not a principal area of contention in Plaintiff’s case, as she

Article III Standing Memorandum

has clearly stated relief to redress the alleged injury caused by Clients. *See* Compl. § 9; *See also Spokeo*, 136 S. Ct. at 1547.

Recent Sixth Circuit Case Law on Standing

The most recent and notable Sixth Circuit case on Article III standing is *Buchholz v. Tanick*, where the plaintiff claimed to have suffered anxiety as a result of debt collection letters sent by a debt collection law firm. *See Buchholz*, 946 F.3d at 865. Finding that the plaintiff failed to allege any “concrete injury-in-fact” traceable to the law firm’s conduct, the court noted that while mere procedural violations alone typically do not constitute sufficient injury-in-fact, certain procedural violations are sufficient to satisfy the injury-in-fact threshold. *Spokeo*, 136 S. Ct. at 1549. Injury-in-fact must consist of both concreteness and particularization. *Id.*

Buchholz underscores that “being subjected to attempts to collect debts not owed” satisfies both the congressional judgment and history in common law requirements to sufficiently convey standing. *See Buchholz* (citing *Demarais v. Gurstel Chargo, P.A.*, 869 F.3d 685, 691 (8th Cir. 2017)). The interplay of this existing exception to the rule barring standing for mere procedural violations may conflict with precedent in other courts of appeals that look only to whether there has been a genuine concrete injury, ignoring distinctions between substantive and procedural rights. *See generally Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917 (11th Cir. 2020) (finding that the question to consider “is whether an injury in fact accompanies a statutory violation.”). While defendants may attempt to make arguments against standing, there is a limited possibility of overcoming the *Buchholz* exception granting standing in cases where a debt collector misstates the amount of debt owed.

ANALYSIS**Plaintiff Likely Has Standing**

Plaintiff likely has satisfied all three prongs of Article III standing. Plaintiff has alleged an

Article III Standing Memorandum

injury-in-fact that is similar to that raised in *Buchholz*, where the Sixth Circuit Court of Appeals emphasized that debt-collection practices, such as those alleged in Plaintiff's complaint, satisfy standing requirements. *See Buchholz* (citing *Demarais, P.A.*, 869 F.3d at 691). Although in most cases injury-in-fact requires more than mere emotional harm, the Sixth Circuit has found that Congress was clear in its intent to confer standing in cases similar to Plaintiff's when it promulgated the FDCPA. *Id.* While *Buchholz*'s carve-out for standing in cases surrounding debt collection practices for debts not owed plausibly confers standing by itself, Plaintiff would also likely satisfy the traceability and redressability prongs on the basis of the alleged facts. Plaintiff's alleged emotional distress from Clients' debt-collection practices directly traces the actions of Clients to the harm alleged by Plaintiff, and the district court is able offer redress through monetary damages or injunctive remedies for the alleged harm experienced. *See* Compl. § 9. There are nonetheless some arguments Clients could attempt to proffer against finding standing in this instance.

Arguments for Lack of Standing**I. No harm could have occurred after debt obligations were paid**

Clients' most plausible argument against standing is that the letters sent by Clients to Plaintiff were mistakenly sent after Plaintiff had knowingly extinguished all prior debt through settlement proceedings. The district court should distinguish between cases where a firm or debt collector uses malicious collection tactics to frighten previous debtors versus cases like Plaintiff's, where a debt collector mistakenly continues to send informative letters regarding a pending debt that the former debtor confidently knows have been settled. This distinct factual circumstance could place this matter outside the purview of the FDCPA, and eliminate any case or controversy. While *Buchholz* makes clear that "being asked to pay a debt not owed" constitutes a concrete injury-in-fact sufficient to convey standing, other cases suggest that actions by debt collectors after debt has been paid or extinguished do not fall under the FDCPA's purview. *See Buchholz*, 946 F.3d at 865. In *Winter v. I.C.*

Article III Standing Memorandum

Systems, a federal district court in California held that a “plaintiff cannot allege a claim for a violation of the FDCPA based on conduct occurred after he paid his debt in full”, finding that the FDCPA makes clear in its own definition of “debt” that “the FDCPA does not apply once a consumer is no longer obligated to pay a debt.” See *Winter*, 543 F. Supp. 2d 1210, 1215 (S.D. Cal. 2008); 15 U.S.C. § 1692a(5). Additionally, the district court in Northern Illinois held in *Posso v. ASTA Funding* that “Congress [has] said nothing in regard to the actions by debt collectors after debts have been satisfied and debt collection proceedings have concluded.” See *Posso*, No. 07 C 4024, 2007 WL 3374400, at *2 (N.D. Ill. Nov. 9, 2007).

Here, Plaintiff knew that she was no longer subject to debt collection activities by Clients, as she was party to the settlement proceedings that extinguished all prior debt. See Compl. § 3. Plaintiff’s knowledge of the settlement agreement prior to receiving the allegedly distressing letters may negate any argument that Clients caused emotional harm. The facts alleged in Plaintiff’s complaint can be compared to and distinguished from the *Buchholz* case and its supporting cases in several important ways. As in *Buchholz*, Plaintiff’s alleged emotional reaction of being left “confused, scared, pained, stressed, distraught, and sad” all likely fall into the categorical exclusion of “general emotional harm” that is not considered concrete injury-in-fact. See Compl. § 5; See also *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464 (1982); *Humane Society of United States v. Babbitt*, 849 F. Supp. 814 (D.D.C. 1994); *Hein v. Freedom From Religious Found., Inc.*, 551 U.S. 587 (2007) (Scalia, J., concurring in judgment).

Although the *Buchholz* exception relies on the *Demarais* decision by underscoring that being subjected to attempts to collect debts not owed is sufficient to establish concrete injury-in-fact, the facts of *Demarais* are distinct to those alleged in Plaintiff’s complaint. See generally *Demarais*, 869 F.3d 685. In *Demarais*, a debt collector and law firm were engaged in the practice of bringing debtors to court in an attempt to seek judgments based on non-appearance at trial. *Id.* at 686. After plaintiff Mr.

Article III Standing Memorandum

Demarais had the case against him dismissed with prejudice, the law firm nonetheless served him with extensive interrogatories, document production requests, and requests for admission using the caption and number of the dismissed case. In each case, courts must decide, based on the facts at hand, “whether an injury-in-fact accompanied a statutory violation.” *See Muransky*, 979 F.3d at 930; *See also Buchholz*, 946 F.3d at 865 (“The [Supreme] Court did not establish a bright-line rule for when a procedural violation, by itself, rises to the level of an injury in fact, and this Court has since noted that ‘it’s difficult, we recognize, to identify the line between what Congress may, and may not, do in creating an “injury in fact.”’”). Unlike in Plaintiff’s case, Mr. Demarais’ case was “not a situation where ‘it [was] difficult to imagine’ how the violation of a statutory right could cause concrete harm,” as being served with fraudulent discovery requests and documents with a dismissed case number would tend “to cause people mental distress, creat[ing] the risk of real, concrete harms.” *See Demarais*, 869 F.3d at 692. In Plaintiff’s case, no such letters were sent under the false pretense of pending legal action, nor did the letters claim to require a response before any particular deadline. *See Exhibits A, B, C*. These factual distinctions between *Demarais* and Plaintiff’s case could provide the district court with a mechanism to distinguish between cases where a firm or debt collector uses malicious collection tactics to frighten previous debtors versus cases like Plaintiff’s, where a debt collector mistakenly continues to send informative letters regarding a pending debt that the former debtor confidently knows have been settled.

II. No concrete injury-in-fact

Clients may also argue that there was no concrete injury-in-fact, even withstanding the *Buchholz* exception granting standing in cases where an individual is being asked to pay a debt not owed. Mere anxiety or vague emotional reactions do not constitute a concrete injury-in-fact sufficient to convey standing. In *Buchholz*, anxiety alone was insufficient to create an injury-in-fact. *See Buchholz*, 946 F.3d at 865; *See also Humane Soc’y of United States*, 46 F.3d at 98 (“But general

Article III Standing Memorandum

emotional ‘harm,’ no matter how deeply felt, cannot suffice for injury-in-fact for standing purposes”). Additionally, *Clapper v. Amnesty Int’l USA* held that “fear of any future harm is not an injury-in-fact unless the future harm is ‘certainly impending.’” See *Buchholz*, 946 F.3d at 865 (citing *Clapper v. Amnesty Int’l USA*, 568 U.S. 398 (2013)). Existing precedent also dictates that “a plaintiff cannot create an injury by taking precautionary measures against a speculative fear” that isn’t certain to come to fruition. See *Buchholz*, 946 F.3d at 865. Although *Demarais* underscores that “being asked to pay a debt not owed” constitutes a concrete injury-in-fact that is in-itself sufficient to convey standing, the court’s reasoning in *Demarais* notably relied on the distinct facts of the case. There, a former debtor was sent letters that deceptively implied he was still subject to a pending legal action that was previously dismissed with prejudice. See *Demarais* at 869 F.3d at 692. The court determined that the letters would cause “reasonable people mental distress [and] create the risk of real, concrete harms.” *Id.* Here, it may not be reasonable for Plaintiff to allege mental distress and the risk of concrete harm when she merely received innocuous letters containing no threat of legal action regarding a debt that she knew was settled.

Merits Defense - Bona fide error affirmative defense

Clients may also argue that sending debt collection letters to Plaintiff after the debt was settled was a bona fide error that bars any liability under the FDCPA. The FDCPA includes a bona fide error affirmative defense which states that “a debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.” 15 U.S.C. § 1692k(c); See also *Csircsu v. Williams & Fudge*, No. 15-13808, 2017 WL 345657 (E.D. Mich. Jan. 24, 2017). Depending on whether Clients unintentionally violated the FDCPA by inadvertently sending letters attempting to collect a debt that was extinguished and had procedures in place reasonably adapted to avoid such a

Article III Standing Memorandum

mistake, Clients may be able to avoid FDCPA liability.

CONCLUSION

Plaintiff likely has standing to sue under the FDCPA in this instance, and can plausibly rely on the Sixth Circuit's broad conveyance of standing outlined in *Buchholz*. Clients may have some arguments against Article III standing on the grounds that the alleged injury occurred only accidentally and after debts were paid and that there was no concrete injury-in-fact. Even so, skirting the *Buchholz* exception allowing for Article III standing in FDCPA cases where an individual is "being subjected to attempts to collect debts not owed" will be a difficult hurdle to overcome. In order to do so, Clients may need to adequately respond on the merits, and could possibly utilize the FDCPA § 1692k(c) bona fide error affirmative defense to dispute any alleged liability.

Applicant Details

First Name	Jack
Last Name	Weisbeck
Citizenship Status	U. S. Citizen
Email Address	jackweis@buffalo.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>916 Delaware Avenue, Apartment 5C</div> <div>City</div> <div>Buffalo</div> <div>State/Territory</div> <div>New York</div> <div>Zip</div> <div>14209</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	5854892982

Applicant Education

BA/BS From	Bucknell University
Date of BA/BS	December 2020
JD/LLB From	University at Buffalo Law School, The State University of New York (SUNY) https://www.law.buffalo.edu/
Date of JD/LLB	May 19, 2024
Class Rank	5%
Law Review/Journal	Yes
Journal(s)	Buffalo Law Review
Moot Court Experience	Yes
Moot Court Name(s)	Philip C. Jessup International Law Moot Court Competition

Bar Admission

Prior Judicial Experience

Judicial Internships/
Externships **No**
Post-graduate
Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Steilen, Matthew
mjsteile@buffalo.edu
(716) 645-7918

Semet, Amy
amysemet@buffalo.edu

McDuff, Angelyn
angelynd@buffalo.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Jack Weisbeck

916 Delaware Avenue – Apt. 5C
Buffalo, NY 14209
(585) 489-2982
jackweis@buffalo.edu

June 12, 2023

Honorable Jamar K. Walker
United States District Judge for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

I am a rising 3L from the University at Buffalo School of Law, and I am excited to apply for a post-graduate clerkship in your chambers. I will make an immediate contribution to your chambers because I have experience with issues that come before federal courts. I worked on criminal, appellate, civil asset forfeiture, civil rights, and employment discrimination cases as a law clerk with the U.S. Attorney's Office for the Western District of New York. While externing with the JustCause Federal Pro Se Assistance Program, I helped plaintiffs comply with the Federal Rules of Civil Procedure. I have been working on a complex class action litigation matter during my first few weeks as a summer associate at Hodgson Russ, LLP. Additionally, I wrote a seminar paper on a possible right to education in the Ninth Amendment, and I wrote about student athlete First Amendment rights for my law review publication competition.

I will make a positive impact in your chambers because of my teamwork abilities. During college, I was selected from a nationwide pool of applicants to participate in the Horizons Huntsman Leadership Summit. There, I learned how to use my strengths to maximize the success of the groups that I work with. I implemented these teamwork abilities on the executive board of my fraternity, where I worked with four others to oversee a group of 95-100 active members. As a team, we navigated the beginning of the COVID-19 pandemic. Further, I used my teamwork abilities as an assistant captain of the Bucknell Club Hockey Team, where I ensured that my teammates were calm and confident in stressful situations. My teamwork abilities will allow me to collaborate with chambers staff to produce quality work, even under stressful conditions.

I plan to use what I learn in a clerkship to advocate for free speech and free expression rights. Through a clerkship, I would like to continue to grow as a writer and develop a network of talented mentors who I can learn from throughout my practice of law. It would be an honor to have the opportunity to learn from you as I begin my legal career. Thank you for your time and consideration.

Very Respectfully,

Jack Weisbeck
Enc.

References

Professor Matthew Steilen – Constitutional Law and Federal Courts Professor
724 O'Brian Hall, North Campus
Buffalo, NY 14260
716-645-8966
mjsteile@buffalo.edu

Associate Professor Amy Semet – Civil Procedure Professor
522 O'Brian Hall, North Campus
Buffalo, NY 14260
716-645-8162
amysemet@buffalo.edu

Lecturer in Law Angelyn McDuff – Legal Analysis, Writing, and Research Professor
722 O'Brian Hall, North Campus
Buffalo, NY 14260
716-645-8182
angelynd@buffalo.edu

Assistant United States Attorney Grace Carducci
100 State Street
Rochester, NY 14614
585-263-6760
Grace.Carducci@usdoj.gov

Assistant United States Attorney Kyle Rossi
100 State Street
Rochester, NY 14614
585-263-6760
Kyle.Rossi@usdoj.gov

Jack Weisbeck

Buffalo, NY | 1-585-489-2982 | jackweis@buffalo.edu

Education

UNIVERSITY AT BUFFALO SCHOOL OF LAW

Juris Doctor expected 2024

GPA: 3.9, Top 5%

Articles Editor on the *Buffalo Law Review*

Competed with the UB Jessup Moot Court Team at the New York Regional

- Awards: 16th Best Oralist (out of 62); 6th Best Written Team Submission (out of 17)
- Vice President of the UB Jessup Moot Court Board

CALI Award recipient: earned the highest grade in Constitutional Law II

Torts Teaching Assistant Fall 2023

BUCKNELL UNIVERSITY

Bachelor of Arts, *cum laude*, December 2020

Major: Economics | GPA: 3.5

Sigma Chi Horizon's Leadership Summit: selected to spend a week learning and practicing different leadership styles.

Sigma Chi Fraternity Executive Board Member

Political Economy Teaching Assistant Fall 2019

Legal Experience

SUMMER ASSOCIATE | HODGSON RUSS LLP | SUMMER 2023

- Working on a wide variety of legal matters at an AmLaw 200 Firm in Buffalo, NY.

RESEARCH ASSISTANT | PROFESSOR CHRISTINE P. BARTHOLOMEW | SUMMER 2023

- Performing advanced research on civil procedure and antitrust law.
- Making grammatical and stylistic edits to academic articles in preparation for their submission.

EXTERN | JUSTCAUSE | SPRING SEMESTER 2023

- Assisted plaintiffs in the Federal Pro Se Assistance Program in Rochester, NY.
- Gained valuable experience with federal court procedures and client communications.
- Assisted prospective clients on the Tenant Defense Project Hotline.

LAW CLERK | U.S. ATTORNEY'S OFFICE FOR THE WESTERN DISTRICT OF N.Y. | SUMMER 2022

- Performed legal writing and research tasks for Assistant U.S. Attorneys in preparation for trials, motions, and appeals.
- Drafted a portion of a motion for summary judgment in a § 1983 action, which was submitted under my name.
- Drafted a motion in opposition to a sentencing appeal to be argued before the Second Circuit.
- Participated in a summer law clerk moot court where I argued on behalf of the government at a fictional detention hearing.

OFFICE ASSISTANT | LEGAL AID SOCIETY OF ROCHESTER | JULY 2016 – JANUARY 2022

- Assisted in implementation of an online document storage system.
- Gathered evidence and made home visits to assist attorneys in the Attorney for the Child Unit.

INTERN | MONROE COUNTY DISTRICT ATTORNEY'S OFFICE | SUMMER 2018

- Assisted attorneys by preparing discovery, monitoring police footage, and transcribing interviews for case preparation.

Interests

HORTICULTURE: GALLEA'S GREENHOUSE AND FLORIST | APRIL 2016 – PRESENT

- Assisting customers with landscaping needs.

ICE HOCKEY: TREASURER + ASSISTANT CAPTAIN | BUCKNELL CLUB HOCKEY | 2017 - 2021

- Assisted with organization of donations for annual Breast Cancer Awareness Game.

FISHING + BOATING: SOUTH BAY BOAT AND TACKLE | SUMMER 2019

- Gave safety, navigational, and operational presentations to boat renters.

Law School UNOFFICIAL Transcript

Name: Weisbeck, Jack William

Student ID: 5022-8921

Date Issued: 06/08/2023

Beginning of LAW SCHOOL Record

Fall 2021

Program: Law JD
Plan: Law

Course	Description	Attempted	Earned	Grade	Points
LAW 500TUT	Legal Profession	0.000	0.000		0.000
LAW 503LEC	Contracts	4.000	4.000	A-	14.680
LAW 505LEC	Criminal Law	4.000	4.000	A	16.000
LAW 509LEC	Torts	4.000	4.000	A-	14.680
LAW 515LEC	Legal Analys, Writing & Res I	4.000	4.000	A	16.000

			Attempted	Earned	GPA Units	Points
Term GPA	3.835	Term Totals	16.000	16.000	16.000	61.360
Cum GPA	3.835	Cum Totals	16.000	16.000	16.000	61.360

Spr 2022

Program: Law JD
Plan: Law

Course	Description	Attempted	Earned	Grade	Points
LAW 500TUT	Legal Profession	1.000	1.000	S	0.000
LAW 501LEC	Civil Procedure	4.000	4.000	A	16.000
LAW 507LEC	Property	4.000	4.000	A	16.000
LAW 511LEC	Constitutional Law 1	4.000	4.000	A	16.000
LAW 516LEC	Legal Analys, Writing & Res II	3.000	3.000	A	12.000

			Attempted	Earned	GPA Units	Points
Term GPA	4.000	Term Totals	16.000	16.000	15.000	60.000
Cum GPA	3.915	Cum Totals	32.000	32.000	31.000	121.360

Fall 2022

Program: Law JD
Plan: Law

Course	Description	Attempted	Earned	Grade	Points
LAW 564LEC	Legal Ethics and Pro Respon	3.000	3.000	A	12.000

Course	Description	Attempted	Earned	Grade	Points
LAW 612LEC	Constitutional Law 2	3.000	3.000	A	12.000
LAW 632SEM	Academic Legal Writing I	1.000	1.000	S	0.000
LAW 639SEM	9th Amendment	3.000	3.000	A	12.000
LAW 654LEC	Business Associations	3.000	3.000	A	12.000
LAW 841LEC	Int'l Legal Advocacy	3.000	3.000	A	12.000

			Attempted	Earned	GPA Units	Points
Term GPA	4.000	Term Totals	16.000	16.000	15.000	60.000
Cum GPA	3.943	Cum Totals	48.000	48.000	46.000	181.360

Spr 2023

Program: Law JD
Plan: Law

Course	Description	Attempted	Earned	Grade	Points
LAW 529LEC	Contemplative Practice	3.000	3.000	S	0.000
LAW 600LEC	Federal Courts	3.000	3.000	A-	11.001
LAW 613LEC	Evidence	4.000	4.000	A-	14.668
LAW 633SEM	Academic Legal Writing II	2.000	2.000	S	0.000
LAW 791TUT	Externship	3.000	3.000	S	0.000
LAW 794TUT	Externship Seminar	1.000	1.000	A	4.000

			Attempted	Earned	GPA Units	Points
Term GPA	3.709	Term Totals	16.000	16.000	8.000	29.669
Cum GPA	3.908	Cum Totals	64.000	64.000	54.000	211.029

Fall 2023

Program: Law JD
Plan: Law

Course	Description	Attempted	Earned	Grade	Points
LAW 517LEC	Advanced LAWR	3.000	0.000		0.000
LAW 604LEC	Sports Law	3.000	0.000		0.000
LAW 610LEC	Criminal Pro: Investigation	3.000	0.000		0.000
LAW 810TUT	Faculty Assistantship	3.000	0.000		0.000

			Attempted	Earned	GPA Units	Points
Term GPA	0.000	Term Totals	12.000	0.000	0.000	0.000
Cum GPA	3.908	Cum Totals	76.000	64.000	54.000	211.029